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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
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5 LESLIE WHITELEY and LEONARD
WHITELEY,

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7 Plaintiffs,

8 vs. No. 303184

9 RAYBESTOS-MANHATTAN, et al.,

10 Defendants.

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22 REPORTED BY: JOANNE M. FARRELL, CSR #4838

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Examination by Ms. Chaber 4 11

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EXHIBITS

Exhibit 1 - CV of Dr. Hoff 18 10

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Exhibit 2 - Notice of Deposition 18 13

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Exhibit 3 - Handwritten Notes of 54 11

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Dr. Hoff

12 Exhibit 4 - 1999 Billing records of 184 24

13

expert witness Joan Hoff (Whiteley

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vs. Raybestos-Manhattan)

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A P P E A R A N C E S

2 WARTNICK, CHABER, HAROWITZ, SMITH &
3 TIGERMAN, 101 California Street, 24th Floor, San
4 Francisco, California, 94111, represented by MADELYN
5 CHABER, Attorney at Law, appeared as counsel on behalf
6 of the Plaintiffs.

8 SHOOK, HARDY & BACON, One Market,
9 Steuart Tower, Ninth Floor, San Francisco, California,
10 94105-1310, represented by LUCY I. MASON, Attorney at
11 Law, appeared as counsel on behalf of the Defendant
12 Philip Morris.

13 - and -

14 SHOOK, HARDY & BACON, One Kansas City
15 Place, 1200 Main Street, Kansas City, Missouri,
16 64105-2118, represented by GENE S. PECK and JAMES R.
17 ARNOLD, Attorneys at Law, also appeared as counsel on
18 behalf of the Defendant Philip Morris

19
20 JACKSON & WALLACE, 580 California
21 Street, 15th Floor, San Francisco, California, 94104,
22 represented by MAUREEN S. MC FADDEN, Attorney at Law,
23 appeared as counsel on behalf of the Defendants Plant
24 Insulation Company, Kaiser Cement and Kaiser Gypsum.

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1 BE IT REMEMBERED that on Friday,
2 December 3, 1999 at 11:21 o'clock a.m., at Shook, Hardy
3 & Bacon, One Market Street, Steuart Tower, Ninth Floor,
4 San Francisco, California, 94105-1310, before me,
5 JOANNE M. FARRELL, a Certified Shorthand Reporter for
6 the State of California, personally appeared:

7 JOAN HOFF, PH.D.,
8 having been called as a witness by the Plaintiffs, who,
9 being by me first duly sworn, testified upon her oath
10 as follows:

11 EXAMINATION BY MS. CHABER

12 MS. CHABER: Q. State your full name for the
13 record, please.

14 A. Joan Hoff.

15 Q. Spell it.

16 A. H-o-f-f.

17 Q. And is it Dr. Hoff?

18 A. Yes, it is.

19 Q. And that's Ph.D.?

20 A. Yes, it is.

21 Q. Have you been -- You have been deposed at
22 least one time previously?

23 A. Yes, I have.

24 Q. Have you been deposed more than one time?

25 A. I've been deposed twice.

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1 Q. And can you tell me what cases those were?

2 A. The first time was with respect to the Dunn
3 and Wiley case and the second time was with respect to
4 a civil action involving the Nixon papers.

5 Q. And where and when was that latter one? I
6 know about the Wiley.

7 A. It was in the fall of 1998.

8 Q. As you know, I'm an attorney representing

9 Leslie and Leonard Whiteley throughout this action
10 against Philip Morris and R.J. Reynolds.
11 This deposition is being taken under oath. Do
12 you understand that?
13 A. Yes, I do.
14 Q. And that's the same oath that would be given
15 in a court of law?
16 A. Yes.
17 Q. And if you do not understand any questions
18 that I ask, or terms are used incorrectly or they are
19 unclear, would you please ask me to rephrase it or to
20 repeat the question?
21 A. Yes, I will.
22 Q. Okay. And again, Counsel may interpose some
23 objections during the course of this deposition.
24 You're not represented here by counsel other than
25 appearing as an expert witness, correct?

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1 A. That's right.
2 Q. And I would ask that you respond to the
3 question and leave the legal maneuverings or whatever
4 to a judge or a court to decide.
5 A. That's my pleasure.
6 Q. Okay. All right. Can you tell me what your
7 current employment is?
8 A. I am directing the Contemporary History
9 Institute at Ohio University and I'm a professor in the
10 History Department there.
11 Q. And Ohio University is located where?
12 A. Unfortunately, in Athens, Ohio.
13 Q. I spent two years in Columbus, at Ohio State.
14 How long have you been there?
15 A. I've been there two years now.
16 Q. And you said you're a professor?
17 A. Yes, I am.
18 Q. What does being the director of the
19 Contemporary History Institute entail?
20 A. It means that I teach only graduate students
21 and we specialize in a Ph.D. that's multidisciplinary.
22 It's given in history, but it teaches the students
23 different methodologies in other disciplines so that
24 they can go on to government work, or teaching, or to
25 business work related to anything in contemporary

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1 foreign policy, economics, even the study of women's
2 history, women's legal status. All kinds of
3 contemporary issues.
4 Q. And when you say different methodologies, what
5 do you mean?
6 A. Well, different disciplines use techniques
7 that we don't always use in history. And consequently,
8 if we can train our students to be familiar with, for
9 example, economics and the procedures that are used to
10 analyze economic data, or if we can teach them to use
11 polls as sociologists use polls, sometimes that helps
12 them in their research.
13 What we try to do is help them to learn as
14 many different interdisciplinary methodologies as
15 possible so that their research can be as comprehensive
16 as possible.
17 Q. And who would be in charge of teaching the
18 methodologies related to economics, for example?
19 A. We have what we call a contemporary history

20 sequence. It's a quarter system, and there are three
21 quarters in this sequence, and what we do is bring in
22 economists, bring in political scientists, bring in
23 sociologists to lecture to them about the
24 methodologies. And then we provide them with
25 bibliographies that they can further study, if they

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1 want to.

2 Q. Okay.

3 A. So we don't pretend that we are an expert in
4 all of those disciplines, by any means. In fact that's
5 why I use the word "multidisciplinary" more than
6 "interdisciplinary."

7 Q. And do you consider yourself to be an expert
8 in economics?

9 A. No.

10 Q. Do you consider yourself to be an expert in
11 polling data?

12 A. No.

13 Q. Two years would have brought us back to 1997.
14 Is that about when you started there?

15 A. Uh-huh.

16 Q. Was it in a particular term?

17 A. The fall.

18 Q. The fall of 97?

19 A. Uh-huh.

20 Q. And prior to that what were you doing?

21 A. I was in New York City heading the Center for
22 the Study of the Presidency.

23 Q. And that was from November of 1995 --

24 A. Yes, it was.

25 Q. -- until you left to go to Ohio University?

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1 A. Uh-huh.

2 Q. What is the Center for the Study of the
3 Presidency?

4 A. It's better to ask what was the Center for the
5 Study of the Presidency.

6 Q. Did it cease and desist on your leaving?

7 A. That's right.

8 Q. You were the center. Okay.

9 A. I inherited it from a fellow who established
10 it 30 years ago, and it was more or less on its way out
11 and down. I preserved the journal that it published,
12 and by and large it simply had run out of steam and
13 purpose, basically. And I don't like to manage things
14 that are senseless or serve no purpose, and so we
15 quietly folded the tent and went away.

16 The best thing about it was I was able to keep
17 a rent-controlled apartment in New York as a result.

18 Q. And still have, I hope?

19 A. Yes.

20 Q. One does not give those up?

21 A. No. I was there two weeks ago.

22 Q. Okay. So then I guess the question is what
23 was the Center for the Study of the Presidency?

24 A. It actually was established by Gordon Hoxie on
25 Long Island in the mid-'60s because of problems that he

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1 had with a small college there and student
2 demonstrations.

3 Q. What college?

4 A. I'm trying to think of the name of the

5 small -- It's got an odd name.
6 Q. C.W. Post?
7 A. Yes, that's it. And I momentarily forgot it.
8 And so he, because of those troubles, and ultimately he
9 was relieved of his duties as president, he went on to
10 establish the center for students to come together and
11 discuss modern politics and evaluate presidents as an
12 alternative to demonstrating in the streets.
13 So it was a good purpose at the time and I
14 think it served a good function for a number of years,
15 but it slowly got out of touch with reality and what
16 students want or think that they need today.
17 Q. So, during the two years that you were
18 involved with it, what were you doing?
19 A. We were trying to shore up first the
20 subscription list for the journal.
21 Q. What was the name of the journal?
22 A. The journal is Presidential Studies
23 Quarterly -- it's now coming out of Texas -- which was
24 not yet computerized in 1995.
25 And we were also then trying to see if there

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1 were certain functions of the organization that we
2 could continue to do. Put on an annual conference in
3 Washington, D.C., for students from -- who were
4 nominated from their individual colleges and
5 universities. And so we continued to do that and see
6 if there were some other kinds of lobbying activities,
7 and the whole idea was to move the operation to
8 Washington.

9 He never affiliated with a university or
10 another institution, and that's why it was very, very
11 difficult to keep this funding going over this length
12 of time, because Ford Foundation and Rockefeller, who
13 originally came and funded this, were no longer making
14 that a top priority.

15 So we were trying to figure out how to salvage
16 it, how to wind it down and make it more focused and
17 specific, and finally I concluded, over certain
18 objections of my board of directors, which included at
19 that time head of NASDAQ, that, really, the journal is
20 the only viable part of it, and so that's what we ended
21 up salvaging and preserving.

22 Q. And the journal, you said, then moved its
23 headquarters?

24 A. Oh, operations, to a presidential study center
25 in Texas under the editorship of Edward George, III.

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1 Q. And have you published in this Presidential
2 Studies Quarterly?

3 A. Actually, I did. I published -- The only
4 thing -- I wrote editorials, but I basically published
5 a couple of pieces on Nixon. We had a special issue on
6 Nixon the second year I was there, and I had worked on
7 Nixon, so I contributed what I couldn't get other
8 people to contribute.

9 Q. How often -- You said it's a quarterly.

10 A. Right.

11 Q. Even I figured that out, with my bad math.

12 A. Okay.

13 Q. During the time that you were involved in it,
14 what other topics were published in the presidential
15 studies --

16 A. We did a special issue on First Ladies. And
17 what I try to do with all of the issues, because I was
18 editing at the same time that I was heading the
19 organization, I tried to broaden its perspective.

20 It had been dominated for years by political
21 scientists using statistical quantitative data, and
22 basically that's kind of boring and doesn't have a
23 general appeal. And Hoxie had originally thought that
24 the quarterly should appeal to decision-makers in
25 Washington, and the Foreign Policy Council in New York,

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1 and these kinds of important influential organizations,
2 and I tried and I think succeeded in convincing him
3 that unless it broadened its appeal, had a more general
4 appeal, these people were never going to read this kind
5 of stuff. So that's what I did most of the seven or
6 eight issues that I edited.

7 Q. Okay.

8 A. I brought in historians, among other things,
9 and then broadened the topics. They never had done
10 anything on women to speak of, let alone First Ladies,
11 and so I tried to make it more diverse and more
12 appealing to a broader audience.

13 Q. What other women's issues have you worked on?

14 A. I've done extensive work -- Even though it
15 wasn't an issue, what I was trained to do at Berkeley,
16 I have done extensive work on women's legal status in
17 this country, but I also, since the field was new in
18 the '70s, when I went into it, I did individual studies
19 of colonial women.

20 I was determined, coming out of Berkeley, to
21 find revolutionary women during the American Revolution
22 who were important, and there turned out to be none, so
23 I studied women during the revolutionary period and
24 came up with a theory that, basically, I think, has
25 proven true, that women don't benefit, basically,

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1 immediately, especially from revolutionary situations,
2 and -- you can look at this country and other
3 countries -- they simply get lost in the process of
4 codifying the law and institutionalizing the
5 revolution.

6 I did that initially because I was teaching
7 over Sacramento and it was easy to come back here and
8 do research.

9 Q. Where were you in Sacramento?

10 A. Sacramento State.

11 Q. Speaking of which, is there a CV someplace?

12 A. Yes.

13 MS. MASON: Yes.

14 MS. CHABER: Since I ran here from court, I
15 don't have my Notice with me.

16 MS. MASON: I'll make a couple copies.

17 MS. CHABER: All right.

18 THE WITNESS: I went on to do a lot of women's
19 research --

20 MS. MASON: Dr. Hoff, wait a second.

21 THE WITNESS: Okay.

22 (Discussion off the record.)

23 MS. CHABER: Q. So colonial women,
24 revolutionary women, we have -- Betsy Ross doesn't
25 count?

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1 A. No, not really. I was hoping -- Because I had
2 majored initially in European and Slavic history, I was
3 hoping to find revolutionary women who were
4 participating in the revolution in a real physical and
5 intellectual sense, as they did in the French
6 Revolution, and it just didn't happen.

7 But it was the bicentennial of the American
8 Revolution, so I contributed this lengthy essay
9 expressing my disappointment to this collection of
10 essays which has continued to sell and be reprinted
11 from that time down to the present. It was not simply
12 because of mine, but we had a good collection of
13 historians working on that.

14 Q. And did you reach conclusions as to why there
15 were no women that rose to the level of prominence and
16 involvement, such as you described the French women
17 did?

18 A. It's complicated, and that's what got me into
19 this field. It was also opening up at the time, what
20 we called the social and cultural history, which is a
21 subfield of U.S. history.

22 In most national histories, you had to go back
23 and look at how women were socially conditioned from
24 the colonial period forward, and what, for example, one
25 of the major religious revivals -- the First Grade
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1 Awakening it was called in the 1740s -- did to women in
2 terms of their own self-perception and their own sense
3 of what we would call today self-esteem, purpose and
4 role in life.

5 And that had -- it prompted the men to become
6 rebellious and to question government, if they got
7 involved in this First Grade Awakening revival
8 movement, but it did the opposite for women, and -- so
9 that intellectual and religious phenomena set women in
10 a position or set them back, compared with the men.

11 Up to that point, they were -- because of the
12 colonial economy and because of just the colonial
13 situation, there, they were more on a par, and even the
14 laws were a little more equitable with respect to women
15 up to the 1740s, 1760s.

16 And then once we get into that
17 pre-Revolutionary period, women simply aren't the
18 decision-makers and they aren't motivated to become the
19 decision-makers, and that's one of the reasons. It's
20 complex, but there are a variety.

21 And the economy was changing, so that they
22 weren't encouraged to do that; and, as in most
23 countries, the men assumed the leadership positions for
24 the revolution itself, which I could appreciate from my
25 participation in the movements over in Berkeley.

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1 Q. And you were in Berkeley?

2 A. During the golden years.

3 Q. The '60s?

4 A. Yes. I was in the state from the early '60s
5 until 1976.

6 MS. MASON: Let me step out again.

7 (Discussion off the record.)

8 MS. CHABER: Q. So after your involvement in
9 studying the revolutionary women, what other women's
10 issues?

11 A. Well, in studying them, I looked at economics,

12 politics, religion, education and the laws, and in that
13 time -- remember, this is the mid-'70s -- the area that
14 was least studied --

15 Q. This is the mid-1970s that you're talking
16 about?

17 A. I'm talking about the mid-1970s.

18 Q. I don't want to confuse the record.

19 A. The area that was the least studied was the
20 legal status of women, so I chose then to go on and
21 look at that, and ended up writing two books, one with
22 an English barrister, Albie Sachs, who's now the head
23 of the Constitutional Court in South Africa -- he's a
24 white ANC member who was a Lawyers League person here
25 in this country -- because he was in exile, on English
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1 and American status of women, English status of women.

2 And then in the mid '90s, I ended up writing a
3 book that covered the legal status of women until the
4 early '90s.

5 Q. The titles of your books and so forth are
6 listed on your CV?

7 A. Yes.

8 MS. CHABER: Which we will mark as
9 Plaintiff's 1.

10 (Exhibit 1 marked.)

11 MS. CHABER: And we will mark as Plaintiff's 2
12 the Notice of Deposition.

13 (Exhibit 2 marked.)

14 MS. CHABER: Q. You were shown, I take it,
15 the Exhibit A on the items you were requested to bring?

16 A. Yes, uh-huh.

17 Q. And you have brought with you those items you
18 believe--

19 A. Yes, I have.

20 Q. -- were responsive?

21 And I see that sitting before you is some sort
22 of a notebook.

23 A. Uh-huh.

24 Q. And can you tell me what that is?

25 A. It contains the notes I took on the five boxes
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1 of material that I looked through.

2 Q. And the five boxes of materials, those are the
3 boxes that are here in the room with us?

4 A. Yes.

5 Q. When did you take these notes?

6 A. I took them over the last two-week period in
7 Big Sky, Montana.

8 Q. And when did you complete them?

9 A. Actually, the day I was flying in here, on
10 Wednesday morning.

11 Q. And what -- when you refer to the five boxes,
12 what is contained within those five boxes? And we can
13 get more specific afterwards, but I want to get a
14 general idea first.

15 A. About two and a half of them contain Xerox
16 copies from the San Francisco Chronicle and the L.A.
17 Times. The bulk of them would be newspaper material.

18 There's also a large section of Xerox copies
19 from Newsweek, Time Magazine, U.S. World & News Report.

20 That kind of covers the mass media material.

21 There are much smaller amounts of material
22 from Better Homes & Gardens, Easy Riders, Mother Jones

23 News, and an even tinier amount of material from the
24 annual -- What do they call them these days? We used
25 to call them "annuals." The high school publications,
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1 yearly publications. Yearbooks, right. And from the
2 Nordhoff High School newspaper and it was called the
3 Range.

4 And then a considerable amount of material on
5 California legislation pertaining to rules and
6 regulations for classes in hygiene, phys ed, and the
7 textbooks that would have been used in the period of,
8 say, from the '50s, '60s, '70s, '80s.

9 There was a miscellaneous folder of material
10 that I had seen previously because of the other
11 testimony I had given in the two other trials.

12 There was a video of public service
13 announcements for the '60s, '70s and '80s.

14 I think that's the bulk of it.

15 Q. Did you yourself find and have copied the two
16 and a half boxes, approximately, of the San Francisco
17 Chronicle, L.A. Times, and the things that you did?

18 A. No, I did not.

19 Q. Where did that come from?

20 A. It came from Shook, Hardy & Bacon.

21 Q. Who in particular? Do you know?

22 A. I met in October in New York City with James
23 Arnold from Shook, Hardy & Bacon.

24 Q. In the past, you've met with Mr. Ohlemeyer?

25 A. Yes.

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1 Q. Who else have you met with from Shook, Hardy?

2 A. I mainly dealt with Ohlemeyer in the previous
3 cases, and I've met now and dealt with Gene Peck here,
4 and Ms. Mason. But basically, I dealt previously with
5 Ohlemeyer.

6 Q. And when did you first form a relationship
7 with Mr. Ohlemeyer? And I do not in any way mean to
8 imply that on any -- I know he's happily married, and I
9 don't mean to imply anything untoward by that.

10 A. It was -- I've been thinking about it. I
11 think it's within late '94. I've been saying '95, but
12 I think he contacted me in late '94.

13 Q. And what was the nature of that contact?

14 A. I was teaching at Indiana University,
15 Bloomington, and there was a case, a trial, that was
16 going to take place in Indianapolis.

17 Q. And that was the Wiley case?

18 A. No, that was the Rogers case. And so he
19 contacted me about that.

20 Q. And what did he tell you?

21 A. He -- I should say that Alan Purvis,
22 representing Shook, Hardy in terms of the research part
23 of it, contacted me first, and I ended up talking to
24 Ohlemeyer.

25 Q. And what were you told when you were first

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1 contacted?

2 A. I was given the information about the case and
3 was asked if, because of the kind of social and
4 cultural research I had been doing on other topics,
5 historical topics, if I would be interested in looking
6 into the history of tobacco.

7 And I thought the request somewhat odd, since

8 I didn't do tobacco, but I found myself in a position
9 where, for two reasons, I became interested.

10 One, it was an extremely, I thought, important
11 social and cultural topic to investigate, and I had
12 graduate students in that area, and it offered them
13 immediate compensation for doing some research. So
14 that was a major consideration.

15 The other one was more personal. I had a
16 friend with whom I had gone to graduate school in
17 Berkeley who was dying of lung cancer in San Diego, a
18 professor at San Diego State, and we had been talking
19 about the question of tobacco and how we viewed or
20 responded to it in the '60s and '70s when we were
21 there.

22 And so for personal reasons, I decided that it
23 would be interesting to find out more about the history
24 of tobacco and attitudes toward it, because we were
25 talking, and -- we were talking with him, and he had

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1 married one of my best friends, and they were then
2 divorced, but all three of us were talking about how we
3 perceived the risks of tobacco and the dangers of it as
4 we all started to try to smoke back in the '60s. They
5 continued to smoke and I never did.

6 Q. You tried it, though?

7 A. Oh, yeah.

8 Q. Did you try it while you were a minor?

9 A. While I was?

10 Q. A minor; someone under the age of 18.

11 A. No. I tried it in Missoula, Montana when I
12 went to college there as an undergraduate. Though I
13 went there at 16, so maybe I did try it as a minor.
14 And then I tried it, obviously with greater gusto, as I
15 got older, but it never was something that I could do
16 with ease.

17 Q. Because you didn't like it?

18 A. Yeah.

19 Q. And your friend continued to smoke?

20 A. The friend who died had stopped smoking ten
21 years before. His ex-wife continues to smoke.

22 Q. Freely?

23 A. Most of my friends continue to smoke.

24 Q. Freely, volitionally and totally with full
25 knowledge?

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1 A. Yeah.

2 Q. And do you believe that addiction plays any
3 role in affecting people's volition?

4 MS. MASON: Objection, if you're calling for
5 an expert opinion, outside of her area of expertise.

6 THE WITNESS: I don't know. I've had friends
7 who have quit, so it's a mystery to me. Some quit,
8 some don't.

9 MS. CHABER: Q. Do you have friends who say,
10 "Boy, I know this stuff is bad but I just can't stop"?

11 A. They say it's difficult to stop. I think
12 everyone -- We all knew, I think, from the beginning of
13 any kind of smoking that we were doing, that it would
14 be difficult to stop.

15 Q. So when you were attempting to smoke, you were
16 doing it knowing that you might have difficulty
17 stopping later?

18 A. If one had formed a habit, yes. But I think

19 that's just a given about what was the common sense
20 knowledge about tobacco at the time. This was in the
21 '60s.

22 Q. And you're saying while you were at UC
23 Berkeley in the 1960s, that it was common knowledge
24 that if you smoked cigarettes, you could become
25 addicted to them such that it would be difficult to

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1 stop?

2 MS. MASON: Objection.

3 You're asking for her personal experience?

4 THE WITNESS: That's all I can attest to.

5 MS. CHABER: Q. That's where I thought we had
6 gone.

7 A. Okay.

8 MS. MASON: I'm making sure.

9 THE WITNESS: I think mainly we thought about
10 the health risks of it, which were very commonly known,
11 and I think, personally, that most of us probably
12 thought that we were so bright and independent that we
13 could never be hooked on anything. But I think,
14 obviously, we knew that it was habit-forming, because
15 that kind of information was just out there.

16 MS. CHABER: Q. But there were people that
17 you knew that were of the mind-set that you were
18 bright, independent, and of course you would be able to
19 smoke cigarettes and be able to stop when you wanted
20 to?

21 A. I think so, yeah. I think there was an
22 arrogance that goes with youth.

23 Q.

24

25 A. [DELETED - PERSONAL INFORMATION]

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1 MS. MASON:

2

3 MS. CHABER: Q.

4

5

6 A.

7 Q.

8

9 A. [DELETED - PERSONAL INFORMATION]

10 Q.

11

12 A.

13 MS. MASON:

14

15 THE WITNESS:

16 MS. CHABER: Q.

17

18

19 A.

20 Q.

21 A.

22 Q. And, in fact, in California, it's remained a
23 very common behavior?

24 A. Yes.

25 MS. MASON: If you know.

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1 MS. CHABER: Q. And, in fact, in this state,
2 at least according to our state government, maybe not
3 according to the federal government, there are certain

4 uses of marijuana that are permitted by law?
5 A. Yes, though usually subject to some kind of
6 jurisdictional litigation, my impression is. I really
7 haven't followed that.
8 Q. The Medical Marijuana Act?
9 A. Not here in California.
10 Q. Okay.
11
12 A.
13 Q.
14
15 A. [DELETED - PERSONAL INFORMATION]
16
17
18
19
20 Q.
21
22 A.
23
24
25 Q. And you actually read the literature at that
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1 time?
2 A. Yeah.
3 Q. And what literature did you read at that time?
4 A. Underground newspapers of all kinds. You just
5 walked on campus and people handed things to you.
6 Q. That said "Cigarette smoking causes lung
7 cancer"?
8 A. Any idea, from the big bang theory to whatever
9 would be at the low end of that scale, the information
10 was available on the Berkeley campus as you walked to
11 your class.
12 Q. And not all that information was correct, was
13 it?
14 A. Probably not.
15 Q. And some information is information that one
16 might call folk wisdom?
17 A. We didn't call it folk wisdom, I don't think,
18 at the time. I don't quite know what you mean by the
19 term "folk wisdom."
20 Q. I'll give you an example. For example, I know
21 that when I was growing up, which wasn't that much
22 different from when you were growing up, what my
23 parents told me was that you shouldn't smoke cigarettes
24 because it could stunt your growth. That's what I
25 would call folk wisdom.
00029
1 A. I would call it common knowledge or
2 common-sense information that parents pass on to
3 children.
4 Q. Are you aware of any data, any truth to that
5 statement that smoking cigarettes could stunt your
6 growth?
7 A. You found it in early textbooks, and so it was
8 believed by a portion of the so-called scientific
9 community in, say, the '30s and '40s in this country.
10 You also would find, in the same textbooks,
11 that it would affect your breathing. So that if we are
12 talking about common knowledge of not simply this
13 subject but other subjects, what you find is that
14 sometimes it proves true and sometimes it doesn't.

15 But the important thing about this kind of
16 information, or perception of rules of behavior or of
17 how we should act in this society, those perceptions,
18 whether true or not, condition very often how we act,
19 or our parents hope they would condition how we act.
20 Q. Right, and as youth, very often when that type
21 of information is given and then does not comport with
22 your reality, it's easily dismissed?
23 A. Well, I'm not so sure that you can say that.
24 Take another example. My mother thought that flies
25 caused polio.

00030

1 Q. It was very common in the 1950s to believe
2 that, correct?
3 A. Right. And then the Salk vaccine came out and
4 we all marched up and got it, and I don't think it made
5 me think less of my mother or more favorably disposed
6 toward flies.
7 It's something, when science disproves one of
8 these common aphorisms, that we grow up with, it
9 disproves it.
10 When science confirms it, it bolsters the
11 position, and I think with respect to when you say the
12 risks or dangers of smoking, common knowledge or common
13 sense about smoking was ahead of the scientific
14 studies, which then finally appeared in the late '30s
15 and went into the '50s and down to the present. So it
16 depends on the issue.
17 Q. And so, in your opinion, then, the common
18 knowledge of the average person would be advanced above
19 the common knowledge of, say, tobacco executives with
20 respect to whether or not cigarette smoking caused any
21 of the myriad of health risks?
22 MS. MASON: Objection, incomplete
23 hypothetical, argumentative and misstates testimony.
24 THE WITNESS: I couldn't comment as an expert
25 witness on the mind-set of executives. I can only

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1 attest to and ultimately will attest to what was out
2 there for the average person and what the average
3 person was exposed to in this country in terms of
4 common knowledge about smoking.
5 MS. CHABER: Q. Let me ask you: Contained
6 within these five boxes, are there documents,
7 newspapers, things that were put out by the tobacco
8 industry to the public denying the health hazards of
9 smoking cigarettes?
10 A. The word "denying" is a little bit difficult
11 for me to exactly answer. Most -- If we are talking,
12 obviously, about statements by companies, perhaps -- or
13 more likely, you're talking about, I think,
14 advertising?
15 Q. No, this was not addressing advertising.
16 A. That's what I need to know.
17 Q. These are public statements, press releases,
18 ads, but not in the traditional sense of advertising,
19 where you're advertising a brand or something like
20 that, where the health risks of smoking were denied.
21 A. In terms of just the way you've stated it, I'd
22 say no.
23 The term "denial" is what is bothering me.
24 Very seldom are you going to find a statement which
25 absolutely denies, in the common way we normally use

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1 that term, the health risks. The statements that are
2 in those boxes are statements which say, usually, that
3 the evidence is not all in, or it's inconclusive, or
4 the issue is still being studied.

5 You framed it in a way that I can't say that
6 they actually deny health hazards.

7 Q. Contained within those five boxes, are there
8 public statements from the tobacco companies or their
9 agents that indicate that there is a controversy as to
10 whether or not cigarette smoking causes lung cancer and
11 other health risks?

12 MS. MASON: Objection as to the term "agent"
13 as vague and undefined and may not be understood by
14 this witness, and there's no time frame. I object as
15 overbroad on the time frame.

16 MS. CHABER: I'm talking about the five boxes.

17 THE WITNESS: But the time frame there goes
18 from the '50s through the '80s.

19 MS. CHABER: Q. Whatever time frame exists in
20 those boxes, are there things within those boxes?

21 A. Say it again.

22 MS. CHABER: Can you read back my question?

23 (Record read.)

24 MS. MASON: Same objections.

25 THE WITNESS: It's hard, because the question

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1 is so complicated. There are statements by the -- I
2 don't know whether they are representatives, statements
3 that are quoted where the representatives of the
4 companies are quoted or where the Tobacco Institute is
5 quoted. There are very few of these.

6 There are statements where scientists who have
7 worked on some of the cancer studies, the American
8 cancer studies, are quoted saying that the evidence is
9 inconclusive, and if that's what you mean by
10 controversy, yes, there are those kinds of statements.

11 But they are coming not simply from tobacco
12 representatives, but from, for example, Tyler Hammond
13 himself, who, right after the '64 report, wrote a
14 Reader's Digest piece in which he said that the
15 evidence was inconclusive.

16 So if you're talking about a controversy based
17 on inconclusive evidence, that is contained in some of
18 these documents. But it certainly doesn't prevail.
19 It's contained primarily through the period of the
20 '50s.

21 MS. CHABER: Q. And you do not have within
22 these boxes tobacco industry statements, say, after the
23 Surgeon General's report of 1964?

24 MS. MASON: Assumes facts.

25 THE WITNESS: There are statements from the

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1 Tobacco Institute saying the same thing that I've just
2 said, and they are coming, again, from -- they are
3 talking about the inconclusiveness of some of the
4 conclusions of the Surgeon General's report of '64.
5 They exist, but they exist in very small number, if
6 you're looking at total coverage.

7 MS. CHABER: Q. Now, did you yourself review
8 all of the sources that there were for information with
9 respect to what was out there and available with
10 respect to tobacco, yourself?

11 A. In terms of what's in these boxes?
12 Q. In terms of any of the work that you've done.
13 A. Yes. I mean, it's very easy for -- when we
14 are talking about the newspapers, to do that, because
15 they are indexed on microfilm, so you can look up
16 subject matter.
17 Q. Have you checked to see that what's in these
18 boxes is every reference to tobacco that appears in
19 publication or any available source?
20 A. I have not checked these boxes against a
21 microfilm index. What I was able to do with these
22 boxes and the newspapers in them was because I had done
23 previous research in the Indianapolis newspapers and
24 Ohio newspapers, I knew what the dates were of the
25 important events involving tobacco, and the important
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1 Surgeon General reports, and the important propositions
2 here in California which were on the ballot
3 periodically concerning tobacco.
4 And so I zeroed in on those dates to make sure
5 that it looked as though or that it appeared as though
6 those important dates were covered in terms of these
7 xeroxed copies. And I would do the same thing if I
8 went back to the index for these newspapers. I would
9 zero in on the dates that are important for this
10 particular case and for my testimony as an expert
11 witness.

12 Q. What dates are those?
13 A. Well, in this case, because of the age of the
14 plaintiff -- The previous cases involved me in looking
15 at these scientific reports which began to appear, the
16 dates of them at least, when they began to appear in
17 the late '30s, early '40s, and in the early '50s, and
18 going on through that decade, so I previously had done
19 that.

20 Then, obviously, everyone zeros in on the
21 Surgeon General's report of '64. But again, that's a
22 little early for this case.

23 And so I was trying to look at what had
24 happened in terms of reports or Surgeon General's
25 statements after '64. And you end up having, you know,
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1 a statement in '71, 1971, where the Surgeon General is
2 saying that he's recommending a ban on smoking in
3 public places. And then here in California you get a
4 proposition in 1978, you get another proposition in
5 1988, involving tobacco, and then a variety of
6 legislative debates here in California.

7 In other words, I was trying to use the
8 newspapers, and then use of the local newspapers as
9 well for Ventura County, to see how -- what the state
10 legislature was doing when it began to discuss a ban on
11 cigarette advertising, for example, as early as 1969.

12 And so that's what I focused on, looking at
13 very specific dates where it became a debate, public
14 debate, either through legislature or through the
15 ballot process with propositions.

16 Q. Did you look at what the tobacco industry was
17 doing in response to any of these events?

18 A. Naturally, as these events occurred, you would
19 have, in some of the stories, but not all of them --
20 You have to keep in mind what the press does is to
21 focus on what they think is the hot or the buzz issue

22 of the day, and what became the important issues were
23 these reports coming from the national government,
24 coming from the Surgeon General.

25 Or when, for example, Congress forced the FTC
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1 to look more closely in the late '70s at cigarette
2 advertising claims with respect to filtered cigarettes,
3 you look at what -- the press then focuses on that, and
4 that's what the headline talks about.

5 The first couple of paragraphs in these
6 stories will talk exclusively about that.
7 Occasionally -- And, of course, since I was doing the
8 research, I would read the entire article. Whether the
9 average person would is questionable.

10 Then you might find in the last paragraphs a
11 couple of statements indicating quotes from the tobacco
12 industry or the Tobacco Institute. Occasionally, when
13 there was a major report in '64 -- again, not so
14 applicable in this case -- the Tobacco Institute did,
15 several days later, in the L.A. Times, have the L.A.
16 Times carry a one- or two-inch piece on their response.

17 But by and large, the responses from the
18 tobacco people are in the last half or the very end
19 paragraphs of these stories. The headlines and what
20 people would notice immediately are the reports of the
21 studies.

22 Q. And how far along would you follow what was
23 then put out subsequent to those key dates?

24 A. Several days.

25 MS. MASON: Assumes facts.

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1 THE WITNESS: Or several weeks. If you're a
2 historian doing that, you would look for a follow-up
3 within a reasonable length of time.

4 MS. CHABER: Q. So you wouldn't
5 necessarily -- If there was, say, the Surgeon General's
6 report in 1964 and it came out on a Saturday in
7 January, how long did you follow the information in,
8 say, the newspapers with respect to that?

9 A. It's very easy to do it, because of the
10 indexes. All you do is look for the key words,
11 "tobacco," "cigarettes."

12 And in the case, for example, of the
13 Indianapolis Star -- now, I didn't look at it so
14 intensely for this case, because, again, of the age of
15 the plaintiff -- the Indianapolis Star had maybe -- I'm
16 just thinking of the printouts I had -- maybe two or
17 three pages, single spaced, of reports relating to the
18 study from January through maybe the middle part of
19 February.

20 And then, bang, they disappeared, and those
21 reports were largely statewide responses to it.
22 Occasionally, they carried statements from cigarette
23 companies. But by and large, the statements from the
24 cigarette companies are going to show up if you just do
25 a simple index search.

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1 Q. But I'm asking you how far you followed that.

2 A. Again, you follow it as far as the index leads
3 you. In the case of Indianapolis, they had a person
4 who had been on the '64 commission which came up with
5 the report, and so they had endless kind of local
6 detail about it. It didn't appear that anybody

7 prominent in California, at least, had served on that
8 commission in '64.
9 Q. Do you know in California how far beyond, say,
10 February of 1964 the issue of tobacco appeared in
11 newspapers, for example?
12 A. I don't know, because I was zeroing in on key
13 dates. I do know that the indexes would clearly
14 indicate that. Anybody could find it out.
15 Q. But you yourself did not go beyond those key
16 dates and whenever the hot news of the day got dropped?
17 A. That's true.
18 Q. And so would it be fair to say then, between
19 key dates, you didn't necessarily look to see what
20 information, propaganda, statements by the tobacco
21 industry were put out there in the -- in between these
22 key events?
23 MS. MASON: Object to the term "propaganda" as
24 vague and undefined.
25 THE WITNESS: Outside of whatever "propaganda"

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1 may mean, I didn't, but anyone could.
2 It's not so important for this particular case
3 to show the follow-up for '64. It would seem to me
4 that you want to show that follow-up for events in the
5 '70s and '80s.
6 MS. CHABER: Q. Isn't it important to know
7 what an individual is growing up in and what their
8 family members may be looking at who may have
9 influential impact on the person?
10 A. Oh, yes, and I think you can knowledgeably
11 state that her parents would have been subjected,
12 through either the Ventura paper or through the Ojai
13 paper, to exactly what I've said here, a two-week heavy
14 dose.
15 And then if you look at the Ventura paper, you
16 can see that they do -- and this I read very carefully
17 for the '70s period -- they do follow up on both state
18 debates and local incidents. They have local
19 columnists who are commenting, doctors who are
20 commenting periodically on tobacco. So there's a good
21 deal of material there on the local level.
22 I can't assume one way or the other whether
23 the parents would have been reading the L.A. Times.
24 MS. MASON: I want to interrupt you. When
25 it's convenient, could we take a five-minute bathroom

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1 break?
2 MS. CHABER: Sure. Now is fine.
3 (Recess taken.)
4 (Record read.)
5 MS. CHABER: Q. Beyond the two weeks that
6 you're talking about, the post-1964 Surgeon General's
7 report, when was the next time frame that you looked
8 at?
9 A. Probably for California specifically.
10 Q. For any opinions you may render in this case,
11 what's the next time period you looked at?
12 A. I then jumped to the 1969 debate here in
13 California over TV ads. Now, there was national
14 coverage in the L.A. Times, and all this national
15 coverage tends to be uniform over -- after the '64
16 report, over what to do about ads about cigarettes.
17 And there were, again, certain follow-ups with

18 respect to other aspects of health hazards, expanding
19 it to heart conditions or respiratory conditions, as
20 opposed to simply lung cancer. So there were stories
21 off and on between '64 and '69.

22 But here in California, they take the issue up
23 specifically in '69, and here in the state legislature
24 over in Sacramento.

25 Q. And, so, between the beginning of 1964 when
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1 the Surgeon General report is released and the two-week
2 time period subsequent to that, the next time period --

3 A. That I focused on?

4 Q. -- was 1969?

5 A. But I took notes on what some of the other
6 related health issues were that were being discussed
7 nationally. And I mean nationally, because these are
8 AP stories that are picked up nationally in the L.A.
9 Times, much more in the L.A. Times than in the
10 Chronicle.

11 Q. And then for what time period in 1969 did you
12 look at the materials?

13 A. The legislative session was in the fall of
14 '69.

15 Q. And then when is the next time you looked at?

16 A. The next time, you have the Surgeon General
17 making a statement in '71 that he's recommending that
18 smoking in public buildings be banned.

19 And, curiously enough, in the Ventura paper in
20 1970, they take up the issue, and the Ojai Valley News
21 is taking it up, because it involves what the policy
22 should be at the high schools in both Ventura and Ojai
23 and at Nordhoff.

24 And in between '69, the legislative session,
25 and the '71 announcement by the Surgeon General,
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1 there's a fire at the Nordhoff High School caused by a
2 senior smoking in a smoking lounge that's been set
3 aside for seniors. And at that point, they stop all
4 smoking for seniors at Nordhoff High.

5 Q. They stop permitted smoking in a specific
6 room, correct?

7 A. Uh-huh.

8 Q. You're not suggesting, for example, that
9 Nordhoff High students didn't go outside the building
10 and smoke?

11 A. Not at all.

12 Q. And you're not suggesting that people didn't
13 go into the restrooms, in the bathrooms, and smoke?

14 A. Not at all. It's a raging controversy,
15 from -- really, between '73 and '76 at Nordhoff,
16 anyway, according to the local paper, over how to
17 handle the problem of smoking at the school.

18 Q. And the stopping of having a smoking lounge at
19 the school has to do with the fact that there's a fire?

20 A. There's a fire.

21 Q. There are no statements that the smoking
22 lounge was being shut down because these children who
23 were smoking are going to get lung cancer in the
24 future, was there?

25 A. There would be no reason for the story to say
00044

1 that. The question was the school had already
2 established a restrictive policy on smoking for health

3 reasons, and it wouldn't make sense for a story to say
4 that.
5 Q. Well, there was a smoking lounge for seniors,
6 was there not?
7 A. Uh-huh, there was.
8 Q. And the reason they were shut down was not the
9 health reasons, but the fact that fire --
10 A. But the reason it had been set up was the
11 health reasons.
12 Q. Explain that.
13 A. Well, if you think back to any smoking ban,
14 the reason behind the ban is that somehow it will
15 deleteriously affect either the direct smoker -- that
16 is, the smoker -- and the person in the area around the
17 smoke. And so these bans were established on the basis
18 that both direct smoke for the person smoking and the
19 indirect smoke or the passive smoke would be harmful,
20 and that's why you had, then, separate areas set up for
21 smoking.
22 Q. And where is that information contained about
23 the Nordhoff High School smoking lounge?
24 A. I think it's logical to assume that all of the
25 debates in the legislature over ads or over public

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1 space and the statements by the Surgeon General in '71
2 about smoking in public buildings were based on the
3 assumption that there was a risk for both smokers and
4 nonsmokers coming from cigarettes.
5 Q. Do you have any information other than an
6 assumption that the smoking lounge in Nordhoff High
7 School was set up to protect others from environmental
8 tobacco smoke?
9 A. Say the question again. The first part of it,
10 I lost.
11 MS. CHABER: Please reread it.
12 (Record read.)
13 THE WITNESS: Maybe I'm misperceiving the word
14 "assumption" here.
15 MS. CHABER: Q. I used your word.
16 A. Yeah. In this instance, you've got since,
17 what, the 1950s scientific evidence questioning
18 cigarettes in terms of their health hazard, and schools
19 and public buildings and state legislatures were trying
20 to come up with rules and guidelines based on these
21 scientific facts and figures about smoking.
22 So it seems to me that in the case of Nordhoff
23 and Villanova High School and others, they were using
24 their knowledge, in this case knowledge from a
25 scientific report, to set up these separate smoking

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1 areas. That's --
2 Q. Let me see --
3 A. Maybe I'm just not getting the word
4 "assumption."
5 Q. The first question is, you don't have any
6 direct evidence or any information other than what you
7 are surmising from what you call a logical conclusion
8 from other facts to state that the smoking lounge that
9 was set up at Nordhoff High School was set up because
10 it was well-known that cigarette smoking caused health
11 problems in nonsmokers?
12 A. Right, there would be no other reason to set
13 up a separate area.

14 Q. That's not my question.
15 My question is: Do you have any specific
16 evidence, discussion, document or otherwise, that says
17 that?
18 A. Says what? That the individuals responsible
19 for setting up the smoking lounge -- what they
20 discussed before they set up the smoking lounge?
21 Q. That the smoking lounge was set up because
22 people were concerned at the school about the effects
23 of second-hand smoke on nonsmokers.
24 A. I guess the smoking lounge story in 1970 was a
25 story about a fire, and so it wasn't about the setting
00047

1 up of the smoking lounge. So the answer to your
2 question would be that that story did not carry the
3 information you're talking about.
4 Q. And you have no other information that states
5 the purpose of the setting up of the smoking lounge?
6 A. Of this particular smoking lounge?
7 Q. Of this particular smoking lounge.
8 A. That's correct.
9 Q. And the school, up until 1970 when there was a
10 fire as a result of somebody smoking, allowed its
11 students to smoke, albeit in a special room?
12 A. Yes.
13 MS. MASON: Objection, presumes facts.
14 MS. CHABER: Q. Now, you were a teacher?
15 A. Uh-huh.
16 Q. Did you have like a faculty room?
17 A. Some of the schools I taught I did.
18 Q. Were you allowed to smoke in class?
19 A. In most of the schools I taught in, you could.
20 Q. When you went to high school, which was where?
21 A. In Montana.
22 Q. Were you allowed to smoke in class?
23 A. Students were. Are you asking if students
24 were?
25 Q. Was the teacher?

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1 A. It's Montana.
2 Q. What does that mean?
3 A. It means we more openly smoke and drink down
4 to the present day without any shame or guilt. So, no,
5 but we were talking just about the 1970s.
6 Q. The smoking lounge that existed at the high
7 school, was there one -- you mentioned another high
8 school?
9 A. Villanova had a much more restrictive policy.
10 They -- From the story, at least, it appeared -- this
11 is again for this one year of 1970 -- they had banned
12 smoking, period.
13 Q. In the building?
14 A. In the building.
15 Q. But they did not ban smoking on the school
16 grounds, did they?
17 A. I don't know. That story didn't reflect that.
18 Q. So is it fair to say you don't have -- I take
19 that back. Was there information given in that story
20 relating to Villanova as to why they had banned
21 smoking?
22 A. No.
23 Q. Banned it, that is, in the building?
24 A. Uh-huh.

25 Q. And other than the story relating to the fire
00049

1 and the banning of smoking, the smoking lounge --

2 A. Lounge.

3 Q. -- you do not have any other specific
4 information with respect to either of those two schools
5 and their smoking policy?

6 A. For 1970.

7 Q. Do you have for other years?

8 A. Again, I read the local newspapers for the
9 entire decade, and between 1973 and 1976 there is
10 discussion, especially in the Ojai Valley News, about
11 the discussion going on at Nordhoff High School among
12 the administrators over how to implement state
13 guidelines on smoking.

14 Q. And what were the state guidelines at the
15 time?

16 A. The guidelines --

17 Q. Go ahead. I'm listening.

18 A. -- were complicated, because they -- as far as
19 the high schools themselves were concerned, because
20 they were -- they reflected this state policy on high
21 school hygiene, and textbooks, and consequently, the
22 discussions -- it was actually brought out in some of
23 the newspaper accounts that what the teachers were
24 teaching the students from these hygiene textbooks
25 about the risks of smoking was perhaps contradicting

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1 the school's smoking policies, and especially
2 contradicting the teachers who were smoking, and so it
3 was a fairly interesting and thorough discussion that
4 the local paper reported on about the administrators
5 going round and round over these issues.

6 And in this instance, between '73 and '76,
7 when the plaintiff was at this particular high school,
8 they discussed smoking laws and other areas or specific
9 designations for where one could smoke, and the student
10 newspaper itself also commented on the fact that the
11 bathrooms were becoming unbearable because of the
12 smoke. They seemed to prefer, in this time period, a
13 smoking law.

14 Q. So the smoking was something that was going on
15 at the school?

16 A. Uh-huh.

17 Q. The plaintiff wasn't the only teenager who was
18 doing that smoking at the school?

19 A. No.

20 Q. In fact, there were -- sounds like enough
21 teenagers doing it that there actually needed to be a
22 place designated for them to do it?

23 A. I think the answer is yes.

24 Q. And the students weren't stopped from smoking
25 other than in certain places, is that correct?

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1 A. Yes. But there were very strict rules and
2 regulations that Nordhoff had established for first
3 time caught, second time caught, third time caught.
4 There were suspensions handed out.

5 Q. But that was if you were caught in an
6 undesignated place, correct?

7 A. Right.

8 Q. But there were places that were designated on
9 the school grounds where students could go and smoke,

10 correct?
11 MS. MASON: Objection, presumes facts.
12 THE WITNESS: They were discussing setting up
13 a designated area. Apparently, it had become a real
14 problem.
15 MS. CHABER: Q. And from that you would imply
16 that there was more than one person who was doing the
17 smoking at the school?
18 A. Yes.
19 Q. Okay. Do you know what the most popular brand
20 of choice among teenagers in the 1970s was?
21 A. I don't. I could venture a guess, but I don't
22 know specifically.
23 Q. Do you know what brands Philip Morris makes?
24 A. I know roughly what brands they were making.
25 Q. What do you know?

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1 A. I think probably I should back off from that.
2 I don't want to guess about the specific brands for the
3 '70s.
4 Q. Do you know whether any of the brands that
5 Philip Morris made in the 1970s -- not whether, but
6 what percentage of teenagers smoked those brands?
7 A. Teenagers, at least in this particular case,
8 seemed to be smoking Camels, by and large.
9 Q. And what's the basis of that?
10 A. Simply from the depositions that I read.
11 Q. You don't see anywhere where the plaintiff
12 said that all the teenagers were smoking Marlboros?
13 A. Marlboros as well, but she went on to smoke
14 Camel Lights, and Marlboros were mentioned, but I think
15 she started with Camels.
16 Q. You read the plaintiff's deposition?
17 A. Yes, I did.
18 Q. Is that what your notes -- some of your notes
19 are?
20 A. No. I highlight the deposition. The notes
21 are largely from the material in the boxes.
22 Q. I see notes here that relate to the
23 deposition.
24 A. Yeah, the Leonard Whittaker deposition, I
25 decided to take some notes on, but largely because I

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1 didn't have access to a highlighter.
2 Q. And do you have the highlighted testimony with
3 you?
4 A. I don't have it with me, no. I have it back
5 at the hotel.
6 MS. CHABER: Can that be provided, Counsel?
7 MS. MASON: Yes.
8 MS. CHABER: And it probably won't come up,
9 but I may need to do some further questioning on the
10 significance of the highlighting. So if there's some
11 way on some break we can get somebody to get it, that
12 might speed things up.
13 MS. MASON: I'll see if we can't do that. I
14 don't know if I agree to a further deposition, but I'll
15 see if I can't get you that depo.
16 MS. CHABER: Q. And the notes that you took
17 on the materials in the boxes are going to have to be
18 discussed, since, no criticism intended, but would you
19 agree that one looking at that this particular page
20 might not know what it says?

21 A. It's a flaw in my note-taking. This isn't
22 unusual.

23 Q. So you didn't just do it to annoy me?

24 A. No, not at all.

25 Q. That's good.

00054

1 A. You can look back at my research on Nixon or
2 any other topic and find similar notes. The computer
3 has made me slightly tidier.

4 Q. Do you have any computer notes related to this
5 case?

6 A. No, I don't.

7 Q. No such luck?

8 A. No.

9 MS. CHABER: We will mark this as
10 Plaintiff's 3.

11 (Exhibit 3 marked.)

12 MS. CHABER: Q. I need to go into this
13 because I can't read most of it, but let's go back to
14 the time frames.

15 You said the next time frame was the '70, '71.
16 Did you look at the entire decade of the 1970s with
17 respect to that index you can go to and get the word
18 "tobacco" or "cigarette"?

19 A. I looked at it for the L.A. Times, seeing if
20 it's something -- in this instance, if there was
21 something -- I was using --

22 When one does this kind of research, you try
23 to be as efficient as possible, and I focused first --
24 Well, I knew what I was looking for in the L.A. Times
25 and the Chronicle in terms of national issues, and so

00055

1 then what I did was say, "Well, what was being reported
2 or what was happening in the local newspapers," which
3 were more apt to have been read by the plaintiff; and
4 looking at those, then, I went back to the L.A. Times
5 to see how they covered these same issues.

6 I tried to see if there was much coverage of
7 what was happening in Ventura, either the county or the
8 city, or in Ojai, but that didn't seem to be the case.
9 So I used the local newspapers for that decade to see
10 what was being commented on there and then worked
11 backwards to the national ones.

12 Q. And is there a copy of every one of the
13 articles from the local newspapers contained within
14 these five boxes that relates to tobacco or cigarettes?

15 A. I can't absolutely say that every one, but it
16 seemed a fairly good selection of articles on tobacco,
17 especially local issues that wouldn't have made any
18 kind of international event or headlines.

19 Q. What other local issues besides this fire at
20 Nordhoff High School?

21 A. Some of this sounds silly, but I think it's
22 important if you're living in a small community, and
23 it's probably the kind of thing you would read:

24 There were two local doctors in the Ojai
25 paper, a Dr. John Nelson, and a Dr. George -- Meldig

00056

1 was the name, M-e-l-d-i-g. There was also one for the
2 Ventura paper, Dr. Lamb. And they were like "Dear
3 Abbies" for the day, or that local area, and they would
4 take questions on anything. And those -- the columns,
5 or the answers they wrote on tobacco questions, were in

6 this collection.
7 That's fairly obscure, but I think people tend
8 to read those columns, as opposed to reading a news
9 story. You tend to go to "Dear Abby" and read it.
10 Q. Do you know whether the plaintiff did?
11 A. Not to my knowledge, from the ones I read. I
12 tend to look at the names, and her name, the birth name
13 nor the married name, appeared.
14 Otherwise, it was a local couple -- this was
15 in Ventura -- who went around with a portable fan, once
16 the passive smoke issue became an issue, turning the
17 fan on people who were smoking in restaurants.
18 Q. Do you know whether the plaintiff ever read
19 any of those articles?
20 A. As an expert witness looking at this material,
21 no. One never knows what is being read by anyone. But
22 all I can report on is what was being talked about in
23 these newspapers.
24 Q. Which may or may not have been read by the
25 plaintiff or any of her family members?

00057

1 A. Yes.
2 Q. And what other depositions, besides the plaintiff
3 and her husband?
4 A. I read hers. I read her father's. I didn't
5 read as carefully the first husband's -- Dean Moore, I
6 guess it is -- and then I looked at the three siblings'
7 depositions, Rebecca, Kenneth and Michael.
8 Q. Did you look at Christine's?
9 A. I don't think I had Christine's, or I would
10 have looked at it. It might have been missing. I
11 didn't have it.
12 Q. Did you take any notes on those other
13 depositions?
14 A. Huh-uh, huh-uh.
15 Q. Are they highlighted?
16 A. I think the husband's might not be, first
17 husband's might not be. I think the others are.
18 Q. And those also would be back in your hotel
19 room?
20 A. Uh-huh.
21 Q. What's the next event time period that you
22 looked at?
23 A. Well, as I say, I was looking at the local
24 coverage, which was extensive, on the American Cancer
25 Society's branch unit, which was very active. There

00058

1 were ads about -- on smoking clinics.
2 MS. MASON: The question is, what was the next
3 time period?
4 THE WITNESS: And so the next time period was
5 1978, Proposition 5.
6 MS. CHABER: Q. And do you know where the
7 plaintiff was in 1978?
8 A. She had just -- She left high school in '76,
9 and may have at that time still been with her husband
10 in Virginia.
11 Q. And what was Prop. 5?
12 A. Well, it was the proposition to deal with
13 passive smoke in public buildings.
14 Q. And did you look at only the proponents of
15 Proposition 5 materials?
16 A. No. Going to the Chronicle and the San

17 Francisco -- or the Los Angeles Times, you would see
18 more or less full coverage of the pros and cons of the
19 issue.

20 Q. And there were cons of the issue that were
21 widely publicized?

22 A. Widely publicized during a very short period
23 of time just before the vote.

24 Q. Do you know how much the tobacco industry
25 spent on anti-Prop. 5 announcements, releases?

00059

1 MS. MASON: Objection, it presumes facts.

2 THE WITNESS: Presumes what?

3 MS. MASON: Facts not in evidence.

4 THE WITNESS: I don't know the exact figures.

5 The stories were quite clear that they spent money.

6 MS. CHABER: Q. A lot of money?

7 A. Yeah, in that concentrated time.

8 Q. A lot more money than the health community was
9 spending during that same time period?

10 MS. MASON: Objection, presumes facts not in
11 evidence.

12 THE WITNESS: That I wouldn't know.

13 MS. CHABER: Q. Do you know whether there was
14 any television time devoted to the tobacco industry's
15 position on Prop. 5?

16 A. No, I don't.

17 Q. Have you looked at any documents, books,
18 articles that discuss the tobacco industry's response
19 to initiatives such as Prop. 5 with respect to tobacco?

20 A. I have read most of the major secondary source
21 literature on the tobacco industry -- that is, books
22 that have come out in the last, what, 25 years -- and
23 the very last one, that I read at least, by a fellow
24 named Hills, is his last name, I think his first name
25 is called Phillip Hills, called "Smoke Ring."

00060

1 Q. The one that won the Pulitzer prize?

2 A. Yes. The New York Times reporter is the only
3 one that I know of that deals with propositions in
4 California.

5 Q. Have you gone to the University of California
6 San Francisco library and looked at their tobacco
7 archives with respect to tobacco industry responses to
8 Prop. 5 or any other tobacco initiative?

9 A. No.

10 Q. Are you aware that they have an archive of
11 information that relates specifically to the tobacco
12 industry's response to various initiatives in
13 California with respect to tobacco?

14 A. Yes.

15 Q. And you have not looked at any of that?

16 A. I have not.

17 Q. And are you aware that it's available over the
18 Internet?

19 A. Yes.

20 Q. And you have not looked at that?

21 A. I have not looked at that.

22 Q. And have you ever met with any of the people
23 who are studying and researching those issues at UCSF,
24 such as Stanton Glance or others in his department?

25 A. No, I have not.

00061

1 Q. Have you discussed with anyone involved in

2 California in the politics of tobacco initiatives,
3 anyone on either side?
4 A. In any time period?
5 Q. In any time period. That would have related
6 to those issues. I don't mean -- There might be
7 somebody that company --
8 A. I left the state in '76. I think the answer
9 to that is no, the props came after that.
10 Q. And have you read any journal articles that
11 discuss the tobacco industry's political response to
12 any of the California initiatives?
13 A. Journal articles as opposed to monographs or
14 books?
15 Q. Right.
16 A. No is the answer.
17 Q. And the books, the only one that you could
18 cite me to was "The Smoke Screen"?
19 A. That's the only one that I've read of the
20 material I've looked at that does discuss the
21 propositions here.
22 Q. Okay. And you mentioned monographs, so I
23 should ask you about that, as well.
24 A. Well, the standard works on tobacco that we
25 are all in this room, I think, familiar with.

00062

1 Q. I don't know what ones you're familiar with,
2 and I don't want to presume, so why don't you tell me
3 which ones you mean.
4 A. All right. As far as what historians consider
5 to be either legitimately researched and historical
6 studies of tobacco industry, there weren't many before
7 the 1970s, and so you do -- I looked in earlier periods
8 for monographs on tobacco, but by and large they are
9 anecdotal, they are before the scientific evidence
10 begins to come in, and they are not important, I think,
11 for a witness like myself to gather hard data from.
12 So I started in the 1970s with Susan Wagner's
13 book on "Cigarette Country."
14 Q. I didn't hear you.
15 A. "Cigarette Country" is the name of it.
16 That was in 1971. In 1971, a fellow named
17 Thomas Whiteside also published a book called "Selling
18 Death." It was mainly a diatribe against tobacco
19 advertising.
20 So that until the 1990s --
21 And there are books in between, if you want me
22 to mention them --
23 Q. Any ones that you --
24 A. Until the 1990s, Susan Wagner's book was
25 considered the kind of standard history of the

00063

1 industry.
2 Q. And do you know how much access Miss Wagner
3 had to internal tobacco company documents?
4 A. She had some access for early records, because
5 she does go back to the 19th century. And the book
6 coming out in 1971 would have meant that her research
7 would have stopped probably in 1965.
8 Q. And do you know whether or not she had any
9 internal tobacco industry documents --
10 A. For the what period?
11 Q. For the period before she wrote her book.
12 A. She had access to private papers, I think,

13 such as existed on what's his name, Washington Duke,
14 for the late 19th century. I doubt very much, because
15 most company records are not open for the contemporary
16 period, that she had any access for the '50s and '60s.

17 Q. And do you know if she had any access to any
18 of the documents of the -- of the advertising agencies
19 related to the tobacco industry?

20 A. The question's a little broad for me to
21 answer. I don't know what documents she would have
22 wanted from them, from the advertising agencies, or
23 would have been necessary for her to have.

24 Q. Do you know what documents she would have had
25 as to the tobacco company's actions with respect to the
00064

1 1964 Surgeon General's report?

2 A. No, not offhand. I mean, she would have had
3 the normal kinds of reports and studies, but other than
4 that, I don't know if she had any particular privileged
5 access, if that's what you're asking.

6 Q. Do you know whether or not she had any
7 internal tobacco industry documents that related to the
8 actions that they took with respect to the 1964 Surgeon
9 General's report?

10 A. No, I don't know.

11 Q. And I think you'd gotten to 1970. What other
12 monographs or books?

13 A. Maybe -- To make a long story short, what
14 happens from the '70s forward into the '80s is that if
15 you look at Whiteside's relatively simplistic
16 interpretation that it's the advertising that's driving
17 the smoking, to Wagner's relatively even-handed
18 history, historians and political scientists who get
19 interested in this begin to make the picture look more
20 complex. That's what we are largely paid to do.

21 That is, you start with a simplistic thesis
22 and you say, no, the issue must be more complex than
23 that. And so the books that began to come out then in
24 largely the 1980s, by Michael Schudson or Robert Sobel,
25 ending in 1993 with John Burnham's book, "Bad Habits,"
00065

1 tended to be -- to represent the new -- the relatively
2 new field of history known as "cultural social
3 history."

4 And so what they did, and others like them,
5 were to write articles and ultimately monographs
6 showing how complex the factors are which enter into
7 the picture for why people either start to smoke or how
8 they perceive tobacco products.

9 And they, in essence, turn the cigarette into
10 a cultural icon. That's a shorthand way of saying that
11 it represents all kinds of very interesting things to a
12 society and its use in cultural and habitual cultural
13 ways that tell us a lot about how we live.

14 And so that was the trend within history until
15 the 1990s, when you begin to get then a slightly
16 different type of literature, though it still contains
17 this cultural and social element with Richard Kruger's
18 book with Glance -- which isn't really an interpretive
19 book; it's a publication based on documents, reprints
20 the documents -- and then this one I mentioned earlier,
21 Phillip Hill's book, "Smoke Screen."

22 Q. And the reason that those books in the late
23 1990s have a different bent is because all of a sudden

24 for the first time millions of internal cigarette
25 company documents are now available to be analyzed,
00066

1 correct?

2 MS. MASON: Objection, foundation,
3 argumentative, presumes facts.

4 THE WITNESS: Some of them focus on those.
5 Kruger's book doesn't really focus that much on them.
6 Glance is just a reproduction of them.

7 MS. CHABER: Q. You're talking about the
8 cigarette papers?

9 A. Yeah, uh-huh.

10 Q. Stan Glance has written other things, as well,
11 hasn't he?

12 A. Yeah.

13 Q. And you've read those on tobacco?

14 A. I've only read one article that he wrote in
15 '95 in the Journal of the American Medical.

16 Q. Which one is that?

17 A. It's on passive secondary smoke.

18 MS. CHABER: Can I have my earlier question
19 read back that was then objected to?

20 (Record read.)

21 THE WITNESS: Are you asking me to answer that
22 question again? Did I answer it?

23 MS. CHABER: Q. You gave an answer which I
24 didn't think was responsive. I think you answered a
25 slightly different question.

00067

1 MS. MASON: Same objections, and I'm going to
2 add asked and answered.

3 All right.

4 THE WITNESS: With respect to those three
5 books, one could only say that's true of Glance.

6 MS. CHABER: Q. With respect to this
7 even-handed history that you say Susan Wagner wrote,
8 what makes you call it "even-handed"?

9 A. Within the profession, and my own career has
10 had to deal with this, we try to teach and then we try
11 to practice using facts and data that we gather. And
12 keep in mind, as historians, we gather aggregate data.
13 We are not interested in the exception as much as we
14 are in the generality that we can gather from data.

15 When, in some instances, you find a set of
16 facts that perhaps surprises you in terms of maybe some
17 original hypotheses, that you honestly and fairly
18 evaluate that and report it. And on those grounds, her
19 book initially and Kruger's, as well, which has now
20 superseded hers to a large degree, was considered to
21 be, again, a fairly even-handed account, in that it
22 wasn't either pro or antitobacco necessarily, or pro or
23 antismoking. It falls somewhere in the middle, based
24 on the evidence that they have gathered.

25 And that's what I mean by "even-handed."

00068

1 Q. You would agree that Ms. Wagner did not have
2 available to her any of the internal documents of the
3 tobacco companies that weren't released until the late
4 1990s?

5 A. Oh, yes, but that doesn't necessarily
6 disqualify the book as a fairly accurate account of the
7 industry and of smoking habits -- or smoking
8 statistics -- anyway, up to the 1950s.

9 Q. But having access to certain information can
10 change one's perception of events that occur, correct?

11 A. Generally speaking. But again, within the
12 historical profession, we are trained not to overreact
13 to, you know, single documents, or a particularly
14 flamboyant or let's say controversial set of documents.

15 Let me give you an example that has nothing to
16 do with the case.

17 The current books and controversy over
18 McCarthyism in this country and documents recently
19 received from or gotten out of the Soviet Union, these
20 are probably almost completely undigested documents on
21 which these very popular books are being based right
22 now.

23 This is not considered good historical
24 practice. You want to be able to know the context of a
25 document, whether it's complete, whether it was bought,

00069

1 whether it was stolen, how -- its provenance, really.

2 And without knowing that, I don't know -- As a
3 professional historian, I would suggest that these
4 millions of tobacco documents have not been thoroughly
5 digested by anyone. And so they exist, they are
6 controversial, and they have influenced some of the
7 works, but not all of them.

8 Q. And when you say they haven't been digested by
9 anyone, are you speaking specifically of the books that
10 you've mentioned or is that a general statement?

11 A. It's both general and specific. The amount of
12 material is so large, as you've mentioned, and the fact
13 that these books were written when they were makes --
14 there hasn't been time for that kind of digestive
15 process for that to go on.

16 Q. Haven't there been articles written by medical
17 doctors in the medical journals that have analyzed the
18 internal previously-unavailable tobacco industry
19 documents with respects to certain issues like nicotine
20 and whether or not it's addictive?

21 A. I don't know. I haven't read those articles.

22 Q. You'd agree, though, as a general proposition,
23 that it would be important to consider the information
24 that exists out there, whether or not ultimately you
25 reject it as being valid or --

00070

1 A. I'm only speaking of the time factor involved.
2 It's very difficult to analyze vast quantities of raw
3 data quickly, as a historian. Maybe scientists can do
4 it better or more quickly, but historians can't.

5 Q. Have you looked at, gone to, gone on the Web
6 or otherwise looked at internal documents of the
7 tobacco industry located at the Minnesota repository?

8 A. No, I have not.

9 Q. Have you looked at any documents with respect
10 to an organization called "Hill & Knowlton"?

11 A. No.

12 Q. Have you looked at any documents with respect
13 to an organization called the Tobacco Industry Research
14 Committee?

15 A. Start the first part.

16 Q. TIRC, T-I-R-C?

17 A. I know that.

18 Q. Have you looked at any documents related to
19 TIRC?

20 A. In what time period? This time period?
21 Q. Ever.
22 A. Well -- No, I haven't looked at any documents.
23 I have seen some published reports or -- published
24 reports on the institute, Tobacco Institute.
25 Q. What have you seen?

00071

1 A. Only what the newspapers of the '50s reported.
2 Q. Have you looked at any documents from the
3 Tobacco Institute?
4 A. Internal documents or private documents?
5 Q. Documents from the Tobacco Institute.
6 A. Maybe we are having a problem with the term
7 "documents."
8 Q. Whether they are internal or external
9 documents --
10 A. Well, documents are private documents.
11 Newspaper accounts are public reports. They are not
12 considered documents.
13 Q. Do you know whether or not the Tobacco
14 Institute released pamphlets to the public?
15 A. Not specifically.
16 Q. I take it you've never seen one, if that's the
17 answer?
18 A. Yes.
19 Q. And have you ever looked at any Tobacco
20 Institute documents, whether available to the public or
21 not?
22 A. I think I should say no to that.
23 Q. Have you looked at any Council for Tobacco
24 Research documents?
25 A. No.

00072

1 Q. Have you looked at any publications from the
2 Tobacco Institute?
3 A. Again, "publications" meaning?
4 Q. Something --
5 A. Pamphlets?
6 Q. Published in whatever form. I don't want to
7 restrict it to pamphlets.
8 A. No, outside of newspaper reports or statements
9 by them.
10 Q. And generally there's some effort made by
11 journalists to give two sides to a story, if there
12 purportedly are two sides?
13 A. We go back to what I said earlier. There is a
14 formula for writing stories. I was once a journalism
15 major, and the formula I think still applies today, and
16 that is the most important information first, and what
17 you consider less important dribbles off to the last
18 part of it, and that means then that very seldom does a
19 headline-making story contain, in an "even-handed" or
20 equal fashion, both sides.
21 If you've got a headline that says "Surgeon
22 General Reports Cigarettes Cause Lung Cancer," that
23 story is going to be dominated in the very first part
24 and in the second page coverage of it by what that
25 headline says.

00073

1 Q. And then if you have a headline that says "The
2 Tobacco Institute Says That the Scientific Evidence Has
3 Not Proven That Cigarette Smoking Causes These
4 Diseases," there might be something further down in

5 that article by a health official, saying "That's a lot
6 of baloney," that won't get read?

7 A. Well, if that's the headline, then that story
8 will largely concentrate on the statement from the
9 Tobacco Institute, and probably at the end say "This is
10 in response to a Surgeon General's report," or some
11 other -- the recommendation for banning smoking in
12 public places.

13 Q. Do you have contained within any of these five
14 boxes any articles on which the headline is the tobacco
15 industry's viewpoint?

16 A. I saw several in the L.A. Times right after
17 the '64 report. They were, you know, back in the back
18 section of the paper.

19 They didn't make the front page, they weren't
20 the headline of the day, but they did carry a couple of
21 what would be considered short items on the tobacco
22 industry's position with a headline. The Tobacco
23 Institute, I'll correct myself.

24 Q. Did you see any advertisements or statements
25 by the Tobacco Institute or any of the tobacco

00074

1 companies setting forth the reason that the Surgeon
2 General was incorrect?

3 A. That's a broad question. You mean immediately
4 after the '64?

5 Q. At any time after the '64.

6 A. At any time?

7 Q. Like even a month ago.

8 MS. MASON: Can I have that question read
9 back? I just missed it.

10 (Record read.)

11 THE WITNESS: Again, it's such a broad
12 question, I almost have to have a time frame on it. I
13 don't -- It's worded somewhat extremely, that the
14 Surgeon General was incorrect. I think that that would
15 be very unlikely for even the Tobacco Institute to
16 contemplate. It's too extreme. Their statements
17 tended to be, I think, much more subtle than that.

18 MS. CHABER: Q. What statements have you
19 seen?

20 A. The one I think that comes to mind, and again
21 has little to do with this case, is the Frank statement
22 of January 1954.

23 Q. What do you think is intemperate about it?

24 A. It isn't. That's what I'm saying. So that's
25 why I answered "no" to your question about saying that

00075

1 the Surgeon General was wrong, incorrect.

2 Q. You believe that a statement that says "Our
3 products are not injurious to health" is a moderate
4 statement?

5 A. I think in the context of that entire
6 statement, it is, yes, because you're citing only one
7 sentence from it.

8 Q. Why do you say that? Explain what you mean.

9 A. Well, I had to look at the document very
10 carefully, and for one thing, it was in part written by
11 Gaylord Hill, who had been one of the doctors in
12 England conducting the studies which led to the
13 publicity in the 1950s over the health risks.

14 And the statement says very specifically that
15 "Distinguished scientists have participated in these

16 studies, and we think that their conclusions are
17 inconclusive."

18 And you have to read -- I practically have the
19 thing memorized -- fairly far down in the document, to
20 get the statement you're saying. It is both, I think,
21 mild-mannered in its wording and absolutely boring in
22 its content, if you were just the average citizen
23 looking at that one-shot statement in 1954.

24 Q. What's your evidence that Gaylord Hill wrote
25 that document?

00076

1 A. It came from Susan Wagner's book.

2 Q. Are you aware of any archives that have been
3 opened subsequent to Susan Wagner's book that establish
4 who exactly wrote that document?

5 A. No.

6 (Ms. McFadden leaves deposition.)

7 MS. CHABER: Q. But in your mind it was
8 written by a scientist, correct?

9 A. No. I'm saying that he was consulted in the
10 writing of it and he was consulted in the setting up of
11 the Tobacco Industry Research Committee and, in fact, I
12 think he was one of the first scientists that pointed
13 to it to work on it.

14 Q. And the source of that information is Susan
15 Wagner's book?

16 A. It's one of the sources. I mean, I do
17 specifically -- I know specifically the Hill connection
18 with the '54 report.

19 I think the other information about him and
20 other prominent cancer scientists being involved in the
21 committee's work could have come from other sources.

22 Q. Do you know who John Hill is?

23 A. Well, I do know a John Hill, but it's from --
24 or I know of a John Hill, but the name in connection
25 with my research on tobacco comes from the year 1761.

00077

1 Is that the one you're thinking of?

2 Q. No.

3 A. Okay.

4 Q. And you're not familiar with an organization
5 called "Hill & Knowlton"?

6 A. You mentioned it before, and I'm not.

7 Q. And I take it, then, you've never looked at
8 the archives of Hill & Knowlton specifically with
9 respect to the Frank statement?

10 A. No, I have not.

11 MS. CHABER: Now I need a bathroom break.

12 MS. MASON: Sure.

13 (Recess taken.)

14 MS. CHABER: Q. We've got three exhibits
15 already marked and I guess this is a fourth, which is
16 your 1999 billing records. I see you've listed some
17 hours and the information --

18 A. Uh-huh, uh-huh.

19 Q. -- that those hours entailed, is that correct?

20 A. Uh-huh.

21 Q. What rate are those hours charged at?

22 A. 125 an hour.

23 Q. Since beginning -- Since your beginning
24 business relationship with Shook, Hardy & Bacon,
25 attorneys on behalf of the tobacco companies, how much

00078

1 either time or money have you billed?
2 A. I can't say time, but it's been between 23,
3 \$24,000.
4 Q. Each year, or total?
5 A. No, no, no, total.
6 Q. And those 23 to 24,000 were -- does that
7 include the 42.9 hours listed --
8 A. It actually does, yes.
9 Q. And does that 23 to \$24,000 reflect basically
10 your work on the three cases?
11 A. Yes.
12 MS. CHABER: You didn't by any chance get
13 somebody to get the depositions?
14 MS. MASON: I didn't think about it.
15 THE WITNESS: There's a slight problem there.
16 They are probably scattered in a large handbag that I'm
17 carrying and my suitcase. They are easily retrievable,
18 but they may not all be together. I just kind of
19 dumped them in two different places this morning. You
20 can have them any time.
21 MS. CHABER: We will figure out --
22 MS. MASON: Maybe we should step outside and
23 talk about it. Let's take a real quick break.
24 (Recess taken.)
25 MS. CHABER: Back on the record.

00079

1 Q. Why, I was curious about a comment you made in
2 one of your prior -- I'm not sure if it was testimony
3 or deposition, when you were talking about the two
4 Quaker presidents that you had particularly studied,
5 and you gave a "Thank God" comment that there sort of
6 were only two Quaker presidents, and I was curious as
7 to what that was about.
8 A. It wasn't just that they were Quaker. They
9 were Republican, Quaker, unpopular presidents, and I
10 have a monopoly on that field. I don't think we will
11 ever get any more that have those qualifications or
12 those characteristics.
13 Q. I wasn't sure what the "Thank God" was.
14 A. Presidential studies are hard to do, and
15 especially if you do unpopular presidents.
16 MS. MASON: You just don't want to have to do
17 another study of those guys?
18 THE WITNESS: No.
19 MS. CHABER: Q. When you did your studies on
20 Nixon, you had the benefit of internal papers?
21 A. Yes, as long as they weren't related to
22 foreign policy, which are classified.
23 Q. And you had the benefit of the tapes?
24 A. Some tapes were opened. It's complicated.
25 They began to open them in 1991. My book came out in

00080

1 '94, so I had access to early tapes; not the ones,
2 obviously, since '91.
3 Q. Did you find internal papers to have some
4 impact on your ideas?
5 A. Generally, yes, because what you do when you
6 study a president or write a biography -- I was
7 studying presidential policies -- you want to find out
8 how decisions were reached, and that's next to
9 impossible to do from public statements.
10 And the only reason you want to find that out
11 is, depending on the president, he is either in charge

12 of matters or he's not in charge of matters, and in
13 this case I found out that Nixon was, indeed, in
14 charge.

15 Q. How much analysis have you done into tobacco
16 industry advertising?

17 A. I really haven't. My job, so to speak, in
18 these cases, has been to look at and try to analyze and
19 interpret common information and perceptions about the
20 product and about the industry, and not the industry
21 itself.

22 Q. Doesn't advertising have an effect on
23 information --

24 A. It does. I'm not an advertising expert, and
25 so I looked at ads like any average person would, to
00081

1 get a reaction or respond to them.

2 Q. But you cannot render expert opinion about
3 what the effect of advertising is vis-a-vis knowledge
4 with respect to tobacco?

5 A. No.

6 Q. Do you look at cartoons as a basis for popular
7 information?

8 A. I did, especially for the earlier cases. I
9 looked at more than I have for this one. There
10 were time constraints on what I was looking at here.
11 But yes, I have looked at cartoons.

12 Q. Have you looked at any cartoons with respect
13 to tobacco and any tobacco industry positions or
14 viewpoints, as opposed to information about health
15 risks?

16 A. I don't think I understand what you're saying.
17 Cartoons -- What kind of cartoons?

18 Q. That relate to tobacco industry statements or
19 viewpoints or perceptions of the world.

20 A. That would have been issued or drawn by the
21 companies themselves?

22 Q. No. You're right, that was confusing.
23 Well, first of all, have you looked at any
24 cartoons drawn by anybody or made by anyone? Cartoons
25 could be more than a newspaper-type thing. It could
00082

1 be -- My kid watches Saturday morning cartoons. Have
2 you looked at any cartoons with respect to smoking and
3 public smoking?

4 A. Print cartoons and audio or audio-visual
5 cartoons, cartoon cartoons?

6 Q. Yes.

7 A. Animated cartoons?

8 Q. Yes, that was the word I was looking for.

9 A. I've looked at both, but not for this case.

10 Q. What ones, in terms of animated cartoons, have
11 you looked at?

12 A. What I looked at several years ago were the
13 old, I think they were Goofy cartoons, among other
14 things, beginning in about the late '30s, that directly
15 addressed the subject of smoking.

16 Q. Do you ever watch the old cartoons of the
17 Flintstones during the time period when there was
18 tobacco advertising on TV?

19 A. No, I have not.

20 Q. Can you state for me in some summary form what
21 your opinions are with respect to this case?

22 MS. MASON: Objection, that's pretty vague and

23 overbroad.
24 But you can answer that, to the best you can,
25 MS. CHABER: That's how Jeff first started out

00083

1 his questioning to Alan Smith yesterday.
2 THE WITNESS: Again, it is hard to answer it.
3 The reason I'm here is to try to indicate what I think
4 the mass media material and other evidence that I've
5 looked at says about common knowledge for the decades,
6 basically, of the '70s, '80s, and maybe into the '90s.
7 So I don't have an opinion about the case. I simply
8 have an opinion about what was out there during the
9 time period that would be relevant to this plaintiff.

10 MS. CHABER: Q. Well, tell me that.

11 A. That there was an abundance of evidence or
12 indication of -- from popular media, from newspapers,
13 from material we normally look at, to determine common
14 knowledge or mainstream interpretations.

15 That if you look at California and then narrow
16 it to Ventura County and Ventura and Ojai, there was an
17 abundance of information out there about the hazards of
18 smoking, and it gets more abundant as you go more
19 local.

20 Q. And presumably, it gets more abundant as you
21 get closer in time to the present?

22 A. Yes.

23 Q. And the materials from which you have gathered
24 this opinion are contained within the five boxes
25 sitting in this room?

00084

1 A. Plus the earlier work I did, because all
2 research is cumulative, and so I would have had some
3 ideas from earlier materials. I mean, they are still
4 in my head. From that, and from what I knew of the
5 other cases and other evidence I looked at.

6 Q. And does there exist somewhere the documents
7 and materials upon which you relied in those two other
8 cases?

9 A. Not that I have access to right now.

10 Q. And what did that consist of, that material?

11 A. Well, some of it was material gathered by my
12 graduate students when I was at Indiana, a couple of
13 whom went on to write articles actually on the subject,
14 and so I would not have kept that material.

15 Q. Who wrote articles and what were they?

16 A. I have one graduate student named Gayle
17 Fischer who published, in a cultural history magazine,
18 an article that had to deal with women reformers and
19 their activities in the last quarter of the 19th
20 century. And she was interested in dress reform, and
21 after that she got interested in political reform and
22 the position of women on a variety of topics like
23 alcohol and tobacco.

24 Q. And what's the name of the article?

25 A. I don't know the name of the article. Her

00085

1 name is Gayle Fischer.

2 Q. G-a-i-l?

3 A. G-a-y-l-e.

4 Q. Fischer?

5 A. Fischer.

6 Q. F-i-s-c-h-e-r?

7 A. Yes.

8 Q. There's a C?
9 A. Yes.
10 And I have a graduate student --
11 Q. Before you go on, is this a journal?
12 A. It's a -- Journal of Popular Culture, I think
13 is the title of it. It's not one of the major national
14 journals, but I think it's called the Journal of
15 National Culture.
16 And I have a graduate student working now,
17 named Matthew Flynn, who may or may not publish
18 something from the Ohio material. He helped me do the
19 research for the State of Ohio.
20 Q. But he hasn't published anything to date?
21 A. Huh-uh.
22 Q. And have you published anything?
23 A. On?
24 Q. These issues.
25 A. No.

00086

1 Q. Why not?
2 A. I haven't published on a lot of topics I've
3 researched, largely for reasons of time constraints, or
4 simply that I move on to other topics before there's
5 time for me to really digest and go over the material.
6 I have a lot of material on the origins of the
7 Cold War. I have a lot of material comparing Nixon to
8 Andrew Jackson. And when you have a career like I do,
9 you have to be kind of savvy about the field and the
10 area that you're researching, and the tobacco area is
11 one where you have -- it's such an abundance of
12 information out there, that it's like the origins of
13 the Cold War: There was such an abundance of
14 information and publications, that there was no point
15 for me to try to step into that and compete in any
16 significant way.
17 So you go on from topic to topic, and
18 occasionally you'll hit a topic that you think you can
19 fill a gap. And with respect to this research and the
20 Cold War research, I didn't think I'd be able to
21 contribute significantly to an area that's so
22 well-researched and published.
23 Q. Now, you've looked at women's issues. Have
24 you looked at women's issues specific to tobacco?
25 A. I have not -- No, is the answer.

00087

1 Q. Have you looked at whether or not there was a
2 cultural phenomenon related to women beginning to
3 smoke?
4 A. That, I looked into. It jumps out at you, if
5 you've done any research on women, how sexist the
6 textbooks may be, or the stereotypes about women and
7 smoking. So in that sense, in reading this material,
8 especially from the 20s and '30s, it was really -- or
9 even the 1890s -- it's basically very offensive,
10 because women are stereotyped with respect to smoking.
11 Q. Have you looked at the issue of women and
12 smoking with respect to things in this century? I
13 guess we won't get to say that very much longer. For
14 example, the rise of women smoking in the 1930s and
15 1940s?
16 A. Yes, I did, for the previous cases.
17 Q. Okay. To what do you attribute women
18 beginning to smoke in the 1930s and '40s?

19 A. They actually began to smoke in the 1920s
20 because of, largely, the cultural phenomenon known as
21 the Jazz Age, the flappers and all of the cultural
22 changes that came after the First World War affecting
23 women.

24 And what you find is, in some of the studies I
25 mentioned earlier, where they are looking to

00088

1 advertising, is that women began to smoke before ads
2 encouraging women or showing women smoking ever
3 appeared, and they did so because of that Jazz Age era
4 in which the flappers and the music and the smoking and
5 the drinking of illegal alcohol became a way of life,
6 for younger women, especially.

7 Q. Have you looked at the issue of women and
8 smoking with respect to the point in time when
9 consumption of cigarettes by women begins its rise?

10 MS. MASON: I'm going to object on the time
11 period, assuming that we know when that --

12 THE WITNESS: Say it again. I didn't get the
13 first part.

14 (Record read.)

15 THE WITNESS: Have I looked at women smoking
16 in terms of consumption -- I guess the answer is yes.
17 I mean, I only looked at women when I was looking at
18 materials which clearly either spoke about women or
19 implicitly discriminated against them in some way.

20 MS. CHABER: Q. Have you looked at any
21 information with respect to at what point in time the
22 percentage of women smoking begins to increase?

23 A. The answer is no, because I wasn't doing a
24 gender-based analysis any time for my work here. If I
25 saw polls or if polls indicated the gender difference,

00089

1 then I might have noted that, but I wasn't looking for
2 that specifically.

3 Q. Have you looked at women and smoking with
4 respect to the women's movement in the 1960s?

5 A. No.

6 Q. Have you looked at advertising campaigns by
7 any of the tobacco companies geared towards the
8 feminist movement in the 1960s and '70s?

9 MS. MASON: Objection, foundation.

10 THE WITNESS: I've looked at ads for that
11 time.

12 MS. CHABER: Q. I mean, you're familiar with
13 the Virginia Slims?

14 A. And "You've Come A Long Way Baby," yes.

15 Q. Would you agree that whole campaign of
16 Virginia Slims and "You've come a long way baby" is
17 addressing the cultural phenomenon of the feminist
18 movement in the 1960s and '70s?

19 A. The cultural phenomenon of the feminist
20 movement in the 1960s. It certainly addressed women
21 very generally in the 1960s. I hesitate to say it
22 addressed the cultural phenomenon of feminism. For one
23 thing, "You've Come A Long Way Baby" is sexist, and I
24 think most conscious feminists in the '60s did not like
25 that slogan.

00090

1 Q. But it was used by them?

2 A. Well, it was dropped, too. So, generally
3 speaking, those ads were geared to women: Whether they

4 were geared towards feminists of the period is another
5 question. You're looking at one of them, so I resented
6 most of those ads.

7 Q. With respect to the influence of religion on
8 tobacco use in this country, would you agree that
9 religion, at least at the beginning of the century,
10 played a role in negative articles about tobacco?

11 A. That religion played a role?

12 Q. Yes.

13 A. Religion certainly did, yes, but not
14 necessarily always geared toward women.

15 Q. No, no. There was no semicolon between those.

16 Can you tell me, in your opinion, given the
17 abundance, I believe was your terminology, of evidence
18 that was available, what would account for the increase
19 of consumption of cigarettes over the same time period
20 that this information was available in the '70s and
21 '80s?

22 A. So we are talking about the '70s and '80s?

23 Q. And let's be clear, since somebody may be
24 reading this in some other time period, the 1970s and
25 1980s.

00091

1 A. So say the question again.

2 Q. What would you -- In your opinion, what
3 accounts for the increase in consumption of cigarettes
4 in the 1970s and '80s, given the abundance of evidence
5 that you say exists on the health risks?

6 MS. MASON: I'm going to object. Speculation,
7 beyond her area of expertise.

8 THE WITNESS: I guess it is. You'd have to
9 break it down, and even then I couldn't answer it in
10 terms of age groups, whether you're talking about
11 teenagers or older. It's really something I can't
12 answer.

13 MS. CHABER: Q. With respect to the 1970s and
14 people under the age of 18 during that time period,
15 what would account for the increase in the amount and
16 incidence of smoking among those teenagers, given the
17 abundance of evidence regarding the health risks?

18 MS. MASON: Same objections. I'm also going
19 to add foundation and presuming facts.

20 THE WITNESS: Again, it would be hard to say.
21 You could only -- From the literature I looked at, if
22 you look at Senior Scholastic, they indicate in the
23 1970s why teenagers say they are smoking.

24 MS. CHABER: Q. And why do they say they are
25 smoking?

00092

1 A. For all of the same reasons they said they
2 were smoking back, really, in the earlier periods.
3 Peer pressure is the largest or the most important
4 reason. They say it's because -- and occasionally this
5 does reflect answers from girls more than boys -- it's
6 part of the costume, it's part of the "look," it
7 relaxes them, it makes them feel adult, makes them feel
8 mature.

9 It's amazing how consistent these are over
10 time when students are actually asked. And in the
11 earlier time period, in the '20s and '30s, very often
12 they would say it was for diet, to diet, and I think
13 that's still a reason today, but it doesn't come out as
14 clearly.

15 Q. Do you know where the concept that smoking a
16 cigarette might help with dieting comes from?

17 A. It goes back to the 1930s -- or 1920s, I
18 should say, in that time period. It fit the flapper
19 costume.

20 Q. And also didn't it fit the advertising of the
21 time, which said "Reach for a cigarette instead of a
22 treat"?

23 MS. MASON: Objection, foundation.

24 THE WITNESS: It fit that example that you
25 gave, yes. But again, keep in mind women started
00093

1 smoking before those kinds of ads were around.

2 MS. CHABER: Q. How many women started
3 smoking before those ads were around? What was the
4 percentage of the population that were women that were
5 smoking before those ads were around?

6 A. I don't know.

7 Q. Do you know what the percentage was of the
8 population of women that were smoking after those ads
9 were around?

10 A. No.

11 Q. Do you know what the root of teenagers --
12 teenage women who started smoking in the birth cohort
13 of 1959 to 1965, do you know what percentage of women
14 within that birth cohort began smoking?

15 A. No.

16 Q. Do you know what percentage of women in that
17 birth cohort continued to smoke?

18 A. No.

19 Q. Do you know whether or not teenage smoking has
20 been on the rise in the 1990s?

21 A. Do I know -- Again. I sort of blocked on the
22 first part of the question.

23 Q. Do you know whether teenage smoking has been
24 on the increase in the 1990s?

25 A. From what I've read, yes is the answer.
00094

1 Q. And if I understood your answer earlier, it's
2 not within your expertise to opine as to why that is?

3 A. Uh-huh.

4 Q. Is that correct?

5 A. That's correct. Yes.

6 Q. So your opinions with respect to the
7 availability of this common knowledge and information
8 regarding the health risks does not extend to your
9 determining why it is then that, given all of that,
10 there has been a rise in teenage smoking, is that true?

11 A. That's true.

12 Q. What was the Organization of American
13 Historians of which you were the chief executive
14 officer?

15 A. Well, it still exists, at least.

16 Q. Okay.

17 A. It's the largest national organization
18 representing historians of U.S. history.

19 Q. But you're not still --

20 A. No.

21 Q. -- the head of that?

22 A. Huh-uh.

23 Q. Are you still an editor of the Journal of
24 Women's History?

25 A. No.

00095

1 Q. And I take it that your CV would have the
2 years of which you were involved in those things?

3 A. Uh-huh.

4 Q. And presently you deal only with graduate
5 students?

6 A. Yes.

7 Q. And are you presently writing something for
8 publication?

9 A. I am. I'm writing two books, one of which is
10 technically in press -- I'm doing the copy editing of
11 it now -- on a study that involves cultural and social
12 issues in Ireland in 1895, when a young peasant woman
13 was killed by her loving husband, father and family
14 because they thought she was a fairy.

15 They thought she was changing, that she'd been
16 possessed by the fairies, so it's a great study for
17 showing what common knowledge, at least among the
18 peasant class were, or common knowledge was at that
19 time, as opposed to the official colonial government of
20 England and Ireland at that time, and the middle class
21 Anglo-Irish. Just a tremendous story.

22 Q. Would you agree that what is "common
23 knowledge," as you're using that phrase, may be
24 different across different socioeconomic groups?

25 A. It varies. I think we all start out in any

00096

1 society with the same -- similar common knowledge,
2 because parents do -- Societies are what? Societies do
3 determine a general culture or do pass on a general
4 culture to all children as they grow up.

5 As you rise or fall in socioeconomic status,
6 it may affect some of those views, but basically, at
7 least in this country, most of us start out pretty much
8 the same.

9 Q. Would you agree that with respect to issues of
10 health risks of tobacco, what is common knowledge may
11 differ between smokers and nonsmokers?

12 A. No, I wouldn't agree. Their common knowledge
13 would differ?

14 Q. Yes.

15 A. As a smoker and nonsmoker?

16 Q. Yes, as to what health risks are with respect
17 to the cigarettes.

18 A. Not at the very basic lowest common
19 denominator of perception or information. I would say,
20 no.

21 Q. Have you looked at any studies or analyses of
22 perceived risk with respect to health risks among
23 smokers versus nonsmokers?

24 A. I've seen some differences on polls just in
25 terms of response levels, not so much about risks,

00097

1 but -- well, I guess maybe it was about risks -- about
2 the linkage between --

3 No, there are some differences. Sometimes
4 nonsmokers will be slightly more or less ahead or
5 behind what smokers do, but if you're looking for the
6 margin of error, I haven't seen any polls that show it
7 very great.

8 Q. What polls are you talking about, and are they
9 contained within these boxes?

10 A. A couple of them are. Again, some of this

11 would come from previous research.
12 MS. CHABER: I would ask to have whatever
13 polls she's talking about be produced.
14 Q. You, I thought at the beginning of this,
15 indicated you didn't think yourself to be an expert in
16 polling data.
17 A. I don't. But anyone who does contemporary
18 social and cultural history since 1935, you have to use
19 them as a portion of our evidence or look at them as a
20 portion of our evidence.
21 We didn't have polls before then, so it makes
22 it easier to do the 1895 study in a way, but -- so we
23 use them as partial evidence for determining this basic
24 level of common knowledge about topics. But we also
25 look at them very carefully. You can't just use

00098

1 them -- Even as a historian, as a non-polling expert,
2 you can't just look at them and take them at face
3 value.
4 Q. You would agree there's a difference between
5 people being aware of something and people believing
6 something?
7 A. Yes.
8 Q. And at what point in time did the majority of
9 smokers believe that cigarette smoking caused lung
10 cancer?
11 A. If -- Again, many of these polls do not break
12 down smokers and nonsmokers, so when you're looking at
13 the general figure, you're assuming that you've got a
14 mixed group. And if you start with the 19, what, 50
15 poll, where, overall, 41 percent, when asked these
16 specific question about the linkage between lung cancer
17 and cigarettes, it was at I think 41 percent.
18 Q. What was the specific question?
19 A. The specific -- I've looked at the specific
20 question. I think it asked a series of questions, but
21 the question that in this instance received the lowest
22 percentage of positive responses was the linkage
23 between, the connection between -- I don't know quite
24 what the word was that was used -- between cigarettes
25 and lung cancer.

00099

1 The other questions had to do with had they
2 seen literature or recently seen literature on the same
3 subject, and a much higher percentage--
4 Q. Had seen something?
5 A. -- had seen something.
6 But in that mixed group, you have to assume
7 the data behind them aren't always as complete as we
8 like. Assuming that the figure -- that the percentage
9 represented by smokers and nonsmokers, it was 41
10 percent --
11 Q. To whatever that specific question was?
12 A. It was with the linkage.
13 Q. But I'm asking you what the specific question
14 was, because linkage --
15 MS. MASON: She can't recall.
16 THE WITNESS: I might not be quoting it
17 exactly, but it was a question that did use the term
18 "lung cancer" and use the term "cigarettes," and the
19 verb in the middle was either "connected," "linked,"
20 "caused," or whatever.
21 MS. CHABER: Q. Or a cause?

22 A. Or a cause.
23 Q. And was it heard or was it believed?
24 MS. MASON: If you can recall.
25 THE WITNESS: Was it what?
00100
1 MS. CHABER: Q. Was it heard that cigarette
2 smoking was a cause --
3 A. No.
4 Q. -- or was it believed?
5 A. I'm separating out the question that simply
6 asked them if they thought there was a connection, and
7 this next set of questions asked them whether they had
8 recently heard or seen or read, or whatever, material.
9 A much higher percentage answered yes to that.
10 Q. That they had seen something?
11 A. That they had seen something, uh-huh.
12 Q. So at what point in time did the majority of
13 smokers believe that cigarette smoking caused lung
14 cancer?
15 A. I don't know specifically on nonsmokers. I
16 can tell you when it tips in the direction of the
17 general answer to the question which contained both the
18 words "cigarette" and "lung cancer."
19 It goes up to 51 percent in 1957, goes up to
20 71 percent after the 1964 Surgeon General's report, and
21 then it continues to rise.
22 Q. And the specific wording of the question makes
23 a difference as to how you interpret?
24 A. I wouldn't say how you interpret, but you do
25 have to look at the wording of the question. I once

00101
1 worked for Princeton University and put together the
2 ETS exams, and it was the closest --
3 Q. You were the one?
4 A. Yes, I was.
5 Q. A lot of people don't like you.
6 A. And we had to figure out, in multiple choice
7 at least, where you place the correct or incorrect
8 answers, because it does make a difference. And so as
9 historians and as a nonexpert on polls, we train our
10 graduate students to look at the questions. Sometimes
11 you get them and sometimes you don't.
12 So, yes, we look very carefully at the
13 wording. And what I did with respect to these
14 particular Gallup polls was to make sure I knew when
15 the question linked cigarettes to lung cancer and when
16 the question simply said "Have you heard or read about
17 material with respect to this." And the more specific
18 the question, usually the lower the percentage. The
19 more general the question --
20 Q. And the questions that come before and after
21 have an effect, as well, on the way these polls are
22 answered?
23 A. Yes. And that's why they are -- You know,
24 it's an interesting piece of evidence, but it's one
25 piece of evidence that we use and try to corroborate

00102
1 with other evidence.
2 Q. And there's people who are polling experts who
3 do this --
4 A. For a living.
5 Q. -- analyze this for a living, and you are not
6 one of them?

7 A. I am not one of them.
8 Q. All right. Let me -- I'm going to want you to
9 do what is going to become a fairly tedious -- but
10 maybe it will go faster than I hoped -- exercise in a
11 minute in relation to Exhibit 3, which are your notes.
12 But first I want to get an idea from you more
13 specifically what's in these boxes. You gave me a
14 generalized answer. The folders are marked, or -- You
15 have them open. They are marked, numbered and in
16 order?
17 A. Uh-huh.
18 Q. Do you know, without me pulling these in front
19 of you, what's in each of these boxes?
20 A. I don't know them by box number, so you'd have
21 to just --
22 Q. All right.
23 A. I did put them back, so I have some sense of
24 the order.
25 Q. Okay. This is two pages of a yearbook?

00103

1 A. Yes.
2 Q. And I'm looking at a folder that says
3 "Nordhoff High School Ranger"?
4 A. Yeah.
5 Q. Is this Ranger the yearbook?
6 A. The Ranger is the newsletter. I think the
7 yearbook was the TOPA TOPA.
8 Q. And how many pages is The Ranger in general?
9 In other words, I'm showing you the first one, dated
10 November 1975. Does this represent the entire issue?
11 A. I doubt it. I don't know, but I doubt it.
12 Q. Do you know whether Leslie Whiteley ever read
13 this?
14 A. I don't. I gathered, I think from one of the
15 depositions, that she worked for the newsletter.
16 Q. Do you know what she did?
17 A. No.
18 Q. Do you know, if she worked for the newsletter,
19 whether she was mimeographing and stapling or whether
20 she was researching?
21 A. My knowledge of high school newspapers is
22 limited to my own. I assume she probably wrote for it.
23 Q. But that's an assumption?
24 A. It is an assumption.
25 Q. You were not given that information?

00104

1 A. (Shakes head negatively.)
2 Q. And you did not see that information anywhere
3 in her deposition?
4 A. I thought I gathered from her deposition that
5 she did -- as I said, worked for the high school
6 newsletter in some capacity.
7 Q. But that she wrote for it is not a piece of
8 information that you have a source for?
9 A. Correct.
10 Q. And looking at this first issue, November
11 1975, and the one page that is attached to the cover,
12 what is the significance of that?
13 A. The significance of it is simply one of the
14 short blurbs in it, "New sign on Nordhoff's girls'
15 bathroom door: 'Welcome to Marlboro Country,'"
16 reflecting the controversy about the smoking policy of
17 the high school.

18 Q. Or reflecting that the girls smoked Marlboros
19 in the bathroom?
20 A. Both.
21 Q. And the fact that there was a sign on the door
22 indicates that it was something that was known to the
23 school?
24 A. I can't presume to say that. One would assume
25 the faculty must have seen it.

00105

1 Q. And certainly probably did if they read The
2 Ranger, correct?
3 A. More likely if they read the Ojai newspaper,
4 because that's where they were reporting on the
5 controversy in this time period.
6 Q. However, the fact that there's a sign on the
7 door to the girl's bathroom, that wasn't reported in
8 the Ojai paper, it was reported in the school paper,
9 correct?
10 A. Correct.
11 Q. And February 1976, the next issue.
12 Oh, by the way, in -- was Leslie Whiteley in
13 Nordhoff High School in November of 1975?
14 A. Yes. She didn't graduate until '76.
15 Q. Okay.
16 A. I don't know whether this one I used for any
17 particular purpose. I'm not seeing here any reference
18 to the smoking question. I may be missing it here in
19 scanning it, but I don't think so. There are some
20 cartoons -- No, the cartoons don't apply, either.
21 Q. I'm going to actually give you the folder, and
22 maybe we can -- as we go through them, you can put them
23 back in so they remain in the order that they were in.
24 A. That's fine.
25 Q. Assuming that they were in date order.

00106

1 The third one is The Ranger. It says
2 "Graduation 1975," and that's handwritten at the top.
3 Do you know who wrote that?
4 A. No, I don't. It came with it. Since you can
5 read it, you know it's not my handwriting.
6 Q. I wasn't going to point that out, but you did.
7 What's the significance of that?
8 A. The significance here is more self-evident,
9 because there is an article by one of the students, it
10 appears, on "Smoking Area, Good or Bad." That simply
11 refers back to the controversy I mentioned.
12 Q. Okay. There's The Ranger, Fall 1972, Volume
13 1, Number 1. Do you know if Leslie was at Nordhoff
14 High in 1971?
15 A. She graduated in three years, so I'm assuming
16 she was there between '73 and '76. This is fall '72.
17 Probably not.
18 Q. Do you know how old Leslie was in the fall of
19 1972?
20 A. Whatever -- she would have been normal-aged, I
21 think, for entering high school. I don't remember what
22 that is.
23 Q. Do you believe she was in high school in 1972?
24 A. No, I don't think so, given the fact she
25 graduated in '76 and only spent three years.

00107

1 Q. Okay. And the significance of the Nordhoff
2 Ranger for a year that Leslie was not at that school is

3 what?
4 A. Simply to give me an impression, or anybody
5 looking at this, what the local high school newsletter
6 tended to talk about. In this instance, there is an
7 article on marijuana smoking.
8 Q. And it gives pro and con?
9 A. It doesn't give the pro and con that the
10 previous article did. It simply says that it should be
11 kept illegal. So it's an antimarijuana-smoking --
12 Q. Does it talk about health risks?
13 A. It talks about instilling fear of death,
14 delusion, and paranoia, percentage of students smoking
15 it.
16 Q. Was what?
17 A. 14.2 percent of the 9th to 12th graders who
18 experimented with drugs at least twice. And the author
19 says, "I think that marijuana would be used for the
20 effect, not for the habit, like cigarettes."
21 Q. And the significance of that?
22 A. The fact that they are simply saying -- he's
23 comparing or contrasting them, regular cigarettes with
24 marijuana cigarettes.
25 Q. Again, as to any of these Rangers, you don't

00108

1 know how many pages the full magazine was?
2 A. No, I don't. It's partially mimeographed, so
3 that indicates it's fairly short, I think.
4 Q. There's certain issues that -- Were there
5 certain issues in these where it was noted that the
6 teachers were all smoking?
7 A. In the article we just talked about, when they
8 discussed the areas for smoking, they indicated the
9 teachers had a smoking lounge.
10 Q. Do you know what the availability to a
11 teenager was in the 1970s of cigarettes?
12 MS. MASON: I'll object to vague as to
13 "availability."
14 THE WITNESS: Availability in terms of legal
15 purchasing?
16 MS. CHABER: Q. Getting them.
17 A. Any way?
18 Q. Any way.
19 A. Not really. I don't have any expert knowledge
20 on how they got them.
21 Q. Do you know whether there were vending
22 machines that were accessible to --
23 A. Yes, because they come up in the discussions
24 of teenagers.
25 Q. And other than there being a picture of Leslie

00109

1 in this 1975 TOPA TOPA, is there any other significance
2 to this?
3 A. No. The significance is simply the picture,
4 and the same for the 1976 yearbook.
5 Q. And did that have any bearing at all on any
6 opinions in this case?
7 A. No, but it is something that cultural and
8 social historians look at, if there are photographs or
9 pictures of the people specifically or in general or of
10 specific individuals.
11 Q. Were you shown pictures of Leslie smoking that
12 were attached to her deposition?
13 A. No. I read about them in the deposition, I

14 think you asked her about them, but I haven't seen
15 them.
16 Q. You haven't seen the videotape that was taken?
17 A. No, no.
18 Q. And were some of these of such significance
19 that there were duplicates in here?
20 A. Conceivably.
21 Q. Just in case you missed them the first time
22 around?
23 A. Uh-huh.
24 Q. And there's a folder -- We are again in Box 1
25 of 5, and excuse me for standing up --

00110

1 A. That's okay.
2 Q. -- Ventura Star Free Press.
3 A. Uh-huh.
4 Q. What time period did this cover?
5 A. If I'm not mistaken, it went from maybe
6 1969 -- maybe '68 through the '70s.
7 Could I check my notes?
8 Q. Sure. Of course. Feel free to refer to them.
9 A. Some of the papers differ. That's why I'm
10 saying that. '64 -- I was wrong. '64 through '78 or
11 '9. Through the Carter administration, basically.
12 Q. And I see that they are mixed in. Amongst
13 them are some Ojai Valley News --
14 A. Yeah. The file was somewhat corrupt, and
15 rather than separate them out, I decided to leave them
16 as I -- so I took separate notes on that. But I did
17 have a run of the Ohio Valley News from, let's see, '73
18 through '88.
19 Q. And is it possible for you to determine how
20 many pages the Ojai Valley News was?
21 A. Not unless I physically saw a copy.
22 Q. And how many sections it had?
23 A. It did not seem to have sections, per se,
24 though it had columns I noted that appeared on the same
25 pages, so that a local person reading it would know

00111

1 where to turn to page so and so to get Dr. John
2 Nelson's column.
3 Q. Well, and again, these were all provided to
4 you, correct?
5 A. Yes, they were.
6 Q. And, for example, in this Ojai Valley News the
7 front page is "Ojai Readies for Another Tennis Event"?
8 A. Yes.
9 Q. Do you know who sponsored that tennis event?
10 A. I don't.
11 Q. Then there's a reference to -- It's hard to
12 read, but page B2.
13 A. Uh-huh.
14 Q. Does that imply to you that there's sections?
15 A. Yeah, uh-huh.
16 Q. And whatever this is appeared on the second
17 page?
18 A. Of B2. What year is that?
19 Q. 1960.
20 A. Okay.
21 Q. You were saying before we started changing
22 paper that it went back --
23 A. My notes go back to '72, but you're correct,
24 the file went back before that.

25 Q. Have you ever looked at the questionnaire
00112

1 that's being referenced in this article from 1960
2 looking at cancer habits study?

3 A. No.

4 Q. Do you know who Dr. Blossom is?

5 A. No.

6 Q. Tell me where this page 16 -- what is "Family
7 Weekly" in the Ventura Star Press?

8 A. I just assumed it was a section of probably a
9 weekend edition. I think it's a weekly section in the
10 local newspaper.

11 Q. Do you know whether this device that's being
12 advertised on page 16 of this paper ever worked?

13 A. No. No, I don't.

14 Q. Did you ever hear of Breck's of Boston?

15 A. I have heard of it, but I'm not sure what it
16 is. I may just have heard it there.

17 Q. Doesn't this say that even without quitting
18 you can cut down, using this device?

19 A. Uh-huh.

20 Q. And then you can go on smoking harmlessly?

21 A. Yes, it does say that.

22 Q. And that was from the 60s, right?

23 1971.

24 A. '71, okay.

25 Q. And I guess one of the editorials in the
00113

1 school paper was that the real problem with the smoking
2 ban is that kids were getting suspended, and then they
3 wouldn't be as smart. They were losing out of some
4 education?

5 A. That might have been one of the implications.
6 Also, I think implied -- the implication I drew from it
7 was they thought the suspension was too strict, too
8 rigid. Too extreme, I guess is the word.

9 Q. By the way, do you know what the success rate
10 of stop smoking clinics are?

11 MS. MASON: At any given time?

12 MS. CHABER: Q. At any given time.

13 A. I don't.

14 Q. There's no point in getting specific if she
15 doesn't have an idea.

16 In fact, do you know what the success rate of
17 any clinics that were available from Leslie's treating
18 doctors were.

19 A. From Leslie's what?

20 Q. Treating doctors?

21 MS. MASON: Objection, foundation.

22 THE WITNESS: I don't understand.

23 MS. CHABER: Q. Do you know what the success
24 rate was of any stop smoking clinic that was available
25 from specifically any of Leslie's treating physicians?

00114

1 A. No, no.

2 (Pause in proceedings.)

3 MS. CHABER: Q. In one of these articles
4 discussing the Nordhoff issue of the smoking area are
5 noted 57 suspensions in just the year as of March 1976?

6 A. Yes. I have that in the notes.

7 Q. Do you know whether smoking destroys
8 Vitamin C?

9 A. I don't.

10 Q. I see there was a note from the Ojai Valley
11 News in 1978 that marijuana use was "widespread and
12 estimated as high as 45 percent of adults in California
13 enjoying this means of altering consciousness at least
14 occasionally."

15 A. And if you look at it, it talks about laced
16 marijuana. It's just not regular marijuana.

17 Q. That was also gradually gaining legal sanction
18 and growing acceptance?

19 A. Uh-huh.

20 Q. And you would agree with that? Well, "laced."
21 You mean paraquat that the United States Government was
22 spraying on it?

23 A. Yeah.

24 Q. And that's what the big concern at the time?

25 A. The concern?

00115

1 Q. It wasn't the marijuana, it was the paraquat.
2 MS. MASON: We might be able to speed things
3 up if we weren't pulling comments out of a paper and
4 asking her whether they are in fact in the paper. But
5 it was just a suggestion.

6 MS. CHABER: I wasn't asking if they were a
7 fact in the paper.

8 MS. MASON: Several of those last questions
9 were.

10 MS. CHABER: Q. These things that I'm looking
11 at now do form part of the basis of your opinion,
12 correct?

13 A. The basis of my what?

14 Q. Opinions.

15 A. Yes.

16 Q. And what was the significance of this article
17 on clove cigarettes?

18 A. On what? Clove cigarettes?

19 Q. Yes.

20 A. Possibly as an alternative to regular
21 cigarettes. I'm not sure.

22 Q. Do you know what year it was that Leslie
23 Whiteley switched to a light cigarette?

24 A. I really don't. I thought I read it in the
25 deposition, in either her current husband's or her

00116

1 deposition, but it was when she was with him.

2 Q. Are you aware of any information available to
3 the ordinary consumer that said smoking low tar, low
4 nicotine cigarettes would be safer?

5 A. I think that would be implied in some of the
6 ads, but also the congressional hearings which were
7 held on it would have highlighted that.

8 Q. Do you know whether those congressional
9 hearings were televised?

10 A. I don't.

11 Q. Did you watch the conventional hearings, by
12 the way, in 1994?

13 A. On -- Oh, with the tobacco executives?

14 Q. Yes.

15 A. Yes.

16 Q. These didn't seem to be in quite the same date
17 order, but I put them back the way they were.

18 A. I did, too.

19 Q. What did you include in the Life magazines?
20 What's the selection?

21 A. I looked at Life for other -- the other cases.
22 And so again, with this, I just went in -- This one
23 starts back in 1920, and I jumped to the end of it to
24 see what was occurring again in the later years. But
25 with respect to that, there wasn't much information in
00117

1 the decades concerning this case.

2 Q. Do you know how much tobacco advertising is in
3 any of those issues that you have there?

4 A. No, no, I don't.

5 Q. And what was the significance to you of -- Why
6 don't I just hand you the stack of these Easy Riders.

7 A. Oh, yeah.

8 MS. MASON: Will you restate the question,
9 Madelyn, or read it back? I didn't hear the complete
10 question.

11 MS. CHABER: Q. What was the significance of
12 the stack of Easy Rider magazines?

13 A. It was mentioned in one of the depositions
14 that she either read or subscribed or was acquainted
15 with this, and so I took a look at it.

16 It's basically of very little significance for
17 this case, simply because it has very little to do with
18 the issues involved here. It's basically a sexist and
19 soft porn publication.

20 Q. And not much there on the health hazards of
21 cigarette smoking?

22 A. That's right.

23 Q. In fact, one of the issues has a woman on the
24 front with a cigarette dangling in her mouth?

25 A. Uh-huh. I found it interesting.

00118

1 Q. Would you agree that -- Well, it's also
2 somebody's very bad copying job, but would you agree
3 that it's interesting for its lack of information about
4 health hazards?

5 A. Until, I think, you get into the '90s. It
6 then begins to talk about health hazards.

7 Q. In the 1990s?

8 A. Yes, in the 1990s. I did note that.

9 Q. Can you show me which issues you're talking
10 about that talk about health hazards?

11 The men at the other end of the table can't
12 wait to come over and see these.

13 MR. PECK: Spare us.

14 MS. CHABER: You may not want to be spared.

15 THE WITNESS: They tended to put the
16 statements in these -- I don't remember what it looked
17 like. I didn't take the exact date down, but I noted
18 not until 1990s.

19 I don't think this was it. They tended to
20 have short stroke things, I think, where it tended to
21 be mentioned. I am not finding it here.

22 I think it might be in this section called
23 "Take It Easy" that I came across a few references
24 there were to the fact that there may be problems with
25 smoking. Reference here to smoking being tougher in
00119

1 Turkey because they behead you, but there's something
2 about celibacy -- not celibacy, but impotency, with
3 respect to smoking. But they are few and far between.

4 My notes just say there were beginning to be
5 some references to it, and I could probably find them.

6 MS. CHABER: Q. But you'd have to pore
7 through --
8 A. "Need to recruit to replace the smokers dying
9 each day," that's one of them.
10 Q. This is 1996?
11 A. This is 1992. It begins then, and I don't
12 know why I didn't see some later ones, but these are
13 the kinds of references, just these little short
14 things.
15 Q. Can you tell a how-many-page magazine that is?
16 A. No.
17 Q. And where that part of it appears?
18 A. This is on page 4.
19 Q. And do you know how many cigarette
20 advertisements are in that magazine?
21 A. I don't. I wondered about advertising in
22 this, who would advertise, but I don't know.
23 Q. Do you know what the readership of that
24 magazine is?
25 A. I don't.

00120

1 (Discussion off the record.)
2 MS. CHABER: Q. Do you know what the time
3 frame of this video on the public service announcement
4 is?
5 A. Yes, I do.
6 Q. Can you tell me?
7 A. '67 to '88, if I'm not mistaken. I know the
8 first one was '67.
9 Q. And do you know how many there are on the
10 tape?
11 A. How many on there?
12 Q. Yes.
13 A. They vary from -- some were ten seconds -- 30
14 seconds to a minute and a half.
15 MS. MASON: Not how long, how many.
16 THE WITNESS: How many? No.
17 MS. CHABER: Q. Do you know at what time any
18 of them were broadcast?
19 A. No.
20 Q. And do you know whether any of those were
21 broadcast during any time period that Leslie Whiteley
22 was watching TV?
23 A. I know the dates, yes. They started in '67
24 and were lumped primarily from '72 through '79, the
25 greater number of them, the greatest number at that

00121

1 time.
2 Q. Do you know if any of them were broadcast
3 during a time period when Leslie Whiteley was watching
4 television?
5 A. I assume so.
6 Q. Do you know whether any of them were broadcast
7 specifically when Leslie Whiteley was watching
8 television?
9 A. No, sorry.
10 Q. Do you know whether any of them were broadcast
11 when any of her family members were watching
12 television?
13 A. No.
14 Q. Do you know what channels they were broadcast
15 on?
16 A. No.

17 Q. Do you know whether they were broadcast in
18 Ventura County?
19 A. No.
20 MS. CHABER: Will you make me a copy?
21 MS. MASON: I'll make you a copy.
22 MS. CHABER: Q. This doesn't happen to be the
23 marked copy of the deposition, does it?
24 A. No, it is not. Sorry.
25 Q. And the San Francisco Chronicle that was here,
00122

1 do you know whether Leslie Whiteley or any of her
2 family members read the San Francisco Chronicle?
3 A. No, I don't.
4 Q. And the same thing with the Los Angeles Times?
5 A. Yes, that's correct.
6 Q. That you do not know?
7 A. I do not know.
8 Q. How about Time magazine? Do you know whether
9 Leslie Whiteley read Time magazine?
10 A. Again, there might have been a reference in
11 one of the depositions to her having access to a couple
12 of those national news magazines.
13 Q. Do you know whether or not Leslie Whiteley
14 ever read Newsweek?
15 A. No, I don't.
16 Q. Do you know whether any of her family members
17 read Newsweek?
18 A. No.
19 Q. Do you know whether Leslie Whiteley read --
20 A. U.S. News & World Report.
21 Q. Thank you.
22 -- U.S. News & World Report?
23 A. No, I don't.
24 Q. Do you know whether any of her family members
25 read U.S. News & World Report?

00123
1 A. No.
2 Q. Did I cover the magazines?
3 A. Better Homes & Gardens.
4 Q. I didn't see those. Do you know where those
5 are?
6 A. They are in there someplace. It's a single
7 folder.
8 Q. Do you know how big?
9 A. Not too big. About two inches, maybe.
10 Q. Do you know what time period they cover?
11 A. Yes, I do.
12 Q. Okay.
13 A. My notes are from '67 to '97, but it could
14 start a bit earlier.
15 Q. Do you know if it's in a folder marked
16 "Miscellaneous"?
17 A. No, it was in a separate folder, but I do
18 recall I had trouble -- when I put it back, I had two
19 sections of it, and I think I finally combined them in
20 the one folder. I think it's a complete folder, but I
21 got it in two pieces when I read it.
22 Q. In Box 2, there was a folder labeled "Better
23 Homes & Gardens," and could you tell me the time frame?
24 A. My notes take it from '67 to '97. It could
25 have started in the early '60s.

00124
1 Q. Do you know how many tobacco ads were in these

2 magazines?
3 A. No.
4 Q. Do you know how many tobacco ads showing thin,
5 attractive women smoking long, thin cigarettes appeared
6 in Better Homes & Gardens?
7 A. No.
8 Q. Tell me again the beginning time frame.
9 A. '67 to --
10 Q. That's what I thought you had said, and now
11 I'm looking at an April 1945, so there's some mixed in
12 here?
13 A. No. My notes -- As I said, I was
14 concentrating on the time period I thought most
15 relevant. So, yes, they went back a ways.
16 Q. Okay. And then there's some reprints.
17 There's some portion without a cover?
18 A. Yeah, a couple of times that occurred.
19 Q. And you don't know whether that covers any of
20 these where there was a cigarette advertisement, do
21 you?
22 A. No, I don't.
23 Q. And at least up to 1966 -- at least up to
24 1970, none of the tobacco advertisements, if there were
25 any in this magazine, would have contained warnings on
00125

1 them?
2 A. That's correct.
3 (Pause in proceedings.)
4 MS. CHABER: Q. And can you tell me what this
5 miscellaneous file that came out of Box 4 is?
6 A. Yeah. It had, as you can see -- I looked
7 mostly at the -- It had some of the Gallup polls
8 scattered throughout it with the backup data -- that
9 is, the questions -- and it had some of the popular
10 songs really antedating, again, this case, which
11 mention smoke.
12 It had a few public transportation legal
13 decisions coming from the late 19th century which I had
14 used or read for one of the previous cases. And
15 there's another decision.
16 It was truly miscellaneous. There's some Good
17 Housekeeping articles here which I didn't look at again
18 because they came so early and they hadn't appeared --
19 the names hadn't appeared in the deposition.
20 Q. Do you know how many movies in the 1970s
21 featured stars smoking?
22 A. No, I don't.
23 Q. Do you know what percentage of movies in the
24 1970s had smoking as occurring --
25 A. No, not in the statistical sense at all.
00126

1 Q. Do you know whether or not there were movies
2 in the 1970s and 1980s in which brand placement of
3 cigarettes appeared?
4 A. Do I just know generally this occurred?
5 Q. Yes.
6 A. Yes, I do.
7 Q. Do you know any specific movies where you're
8 aware of there being brand placement of cigarettes?
9 A. No, I don't know the names. I just realized
10 as an individual that in the '70s and '80s all kinds of
11 products were being advertised in the movies, because
12 they were showing the labels or the brands.

13 Q. But you don't know to what extent that's true
14 with respect to cigarettes?
15 A. No. I think it just was one of the many
16 products they started to advertise.
17 Q. Are you aware of any movies that were actually
18 rewritten so that a cigarette brand could be placed
19 within the star's fingers?
20 A. No.
21 Q. Are you aware of whether or not the majority
22 of movies today have cigarette smoking done by the
23 stars of the movies in the movie?
24 A. That the stars are smoking?
25 Q. Yes.

00127

1 A. I've just read as a private individual that
2 there seems to be a return of smoking scenes in movies.
3 Q. You had made some mention at the beginning of
4 this about high school textbooks?
5 A. Yes.
6 Q. Could you tell --
7 A. That's a separate file.
8 Q. Do you know what it's labeled?
9 A. It may be labeled "State Legislation" or may
10 be labeled "Textbooks," but they are both in the same
11 file.
12 I have it here as "State Legislation."
13 Q. You read the deposition of Elizabeth Whalen?
14 A. For another case, yes, uh-huh.
15 Q. And what did you conclude from that
16 deposition?
17 MS. MASON: If anything.
18 THE WITNESS: Not much, simply because the
19 data she used didn't relate to the kind of common
20 knowledge evidence that I was looking for.
21 MS. CHABER: Q. And what did her opinions
22 relate to?
23 A. The -- She detailed the early studies from the
24 '50s and then highlighted the internal memos which were
25 released before she wrote or gave a statement and gave

00128

1 her deposition.
2 Q. Can you tell me whether that is one poll?
3 Numerous polls?
4 A. Let me just take a quick look.
5 This looks to be by the -- There was a number
6 up here. Just from the cover page, I would say it's 1,
7 because the end number is only 1400.
8 Q. And what year?
9 A. That is for '54.
10 Q. And does it have the entire poll or just a
11 question?
12 A. The interview method was personal, so that
13 means they actually talked to people, and it took them,
14 looks like here, a week to do it. And they talked to
15 about 1400 people. And the subject was health
16 information. So what it is, these are probably from
17 primitive IBM cards that they got, and this shows you
18 the entire poll.
19 Q. It has all the questions?
20 A. It would appear to have all the questions,
21 yeah.
22 Q. Do you actually have all of the questions from
23 the Gallup polls?

24 MS. MASON: From this Gallup Poll?
25 MS. CHABER: That's not a Gallup Poll, that's
00129
1 Roper.
2 THE WITNESS: It's a Gallup Poll survey, but
3 then it's a Roper poll that they ultimately record on
4 to Roper Center.
5 MS. MASON: Is the question does she have all
6 the questions from all Gallup polls, or that Gallup
7 Poll? Will you please repeat the question?
8 MS. CHABER: That might be easier.
9 MS. MASON: Yes.
10 MS. CHABER: Q. How many Gallup polls have
11 you looked at?
12 A. Oh, I'd say half a dozen to eight, spaced over
13 time.
14 Q. And what years?
15 A. Beginning in -- basically, beginning in 1950,
16 although I recall seeing something from '49. But 1954,
17 1957, in the 1960s, and a couple of later ones. They
18 are clustered largely, the ones I looked at most
19 carefully, in the '50s and '60s.
20 Q. Did you have, for whatever years' polls you
21 looked at, the entire poll or just certain questions?
22 A. For the -- and this was for a previous case --
23 I had a graduate student look up the entire poll for
24 '54 and '57, because I couldn't understand the
25 summarized data that was published in the newspapers.

00130
1 And I had -- I think I looked at the complete
2 poll in -- after the Surgeon General's report in '64,
3 but not for this case.
4 Q. And those are polls that you're referring to
5 that are not contained within these boxes?
6 A. Well --
7 Q. Other than what you have in front of you?
8 A. I think that was the only one I came across
9 this time around.
10 Q. And are you relying on the information that
11 you gathered, or that was gathered for you, rather,
12 that was reviewed for another case in this case?
13 A. The complete polls I saw I had gathered for
14 myself for those other cases, yes, and I relied on
15 them, on my memory of them.
16 Q. Correct. I would ask that those be produced,
17 then, if you're relying on them.
18 There seems to be something from -- regarding
19 Gallup polls. What is that?
20 A. I think -- Well, it's a preface, I think, to a
21 publication that they put out about their polling from
22 '35 to '71, and they tried to explain how they do it,
23 sampling procedures.
24 Q. And is that --
25 A. And this is from August '72 by George himself.

00131
1 Q. Have you read the entire publication or only
2 that preface that's provided there?
3 A. No, I have used this publication for a variety
4 of purposes. I was studying politics or foreign policy
5 in this same time period, so I've read in it
6 selectively.
7 Q. Have you read in it about tobacco other than
8 the preface that --

9 A. Yes.
10 Q. -- is there?
11 A. Yes, I mean, because it's such a great source.
12 It's an easy-to-use source. But it doesn't contain
13 those questions.
14 Q. It does not contain the backup data?
15 A. Uh-huh.
16 Q. It's an interpretation --
17 A. It's a handy reference.
18 Q. And is this something that's available --
19 A. Everywhere.
20 Q. Everywhere?
21 A. Yes. I mean, in libraries, obviously.
22 Q. Not in the supermarket?
23 A. Not in the supermarket.
24 Q. How about turning to your notes, and let's try
25 and do some interpretation here.

00132

1 MS. MASON: Madelyn, you may have already done
2 this. We should take a break?
3 MS. CHABER: I've worked through as far as I
4 can work through, and I can't really work through, and
5 I think it's going to take more time to do it that way
6 than I need to go through.
7 MS. MASON: Okay.
8 MS. CHABER: Q. Your first page, hopefully,
9 is my first page.
10 A. Yeah.
11 Q. Somehow yours looks thicker than mine.
12 A. I have an extra notebook that's blank. The
13 pages are blank.
14 Q. You've taken some notes here?
15 A. Uh-huh.
16 Q. Looking at this page, can you tell me what --
17 what's the source of these notes?
18 A. Yeah. I don't know what you're technically
19 calling it, but it came with a cover sheet like this
20 and then had a lot of family data and medical data
21 behind her on it.
22 Q. And do you know where that is?
23 A. That's at the material back at the hotel --
24 No, actually -- No, it's in the material at the hotel,
25 because I kept it with the depositions.

00133

1 MS. CHABER: All right. We'd like that, too.
2 MS. MASON: You'll get what she has at the
3 hotel that she's reviewed.
4 THE WITNESS: I was just trying to quickly
5 fill myself in.
6 MS. CHABER: Q. And there's a phone number.
7 Is that personal?
8 A. Yes, it's personal.
9 Q. Okay. I will consider it crossed off. And
10 below that, is that personal, as well?
11 A. I had dinner with them last night.
12 Q. Okay. But there are some questions off onto
13 the right. Can you read those? That's where I'm
14 running into problems.
15 A. Oh, these were questions of things that I
16 didn't understand as I was looking at the material.
17 Q. Don't add to your notes right this second as
18 you're doing it.
19 A. The first one says, Why so many companies

20 involved ...," it's an ellipsis involved in the case.
21 And the other one refers to "Is there anything
22 on pipefitters?" That is -- I come from a union
23 family, and I was thinking that there were union
24 publications that the father would have received as a
25 pipefitter.

00134

1 And then my next question relates to the
2 textbooks, and I said --
3 Q. It says "why" --
4 A. "Why no textbooks for the 1970s," because I
5 wasn't clear from the list I had when the third, fourth
6 and fifth editions went into the '70s. I assume they
7 had, but the only dates I had were earlier than that.
8 Q. Where are these textbooks?
9 A. They are in there, in the boxes.
10 Q. Maybe you can put your hands on them.
11 A. Okay. That's the box that may start with the
12 title "Legislative."
13 MS. MASON: I saw that one. I'll get it.
14 THE WITNESS: "State Legislation."
15 MS. MASON: Yes.
16 THE WITNESS: Okay.
17 MS. CHABER: Q. And were you able to find
18 anything from pipefitters?
19 A. I had a graduate student check into it. We
20 contacted the national headquarters in Washington,
21 D.C., only to find they kept the national journal and
22 no local or state publications.
23 Q. And so you don't have anything here upon which
24 you're relying?
25 A. No.

00135

1 Q. Okay. And did you eventually find textbooks
2 from the '70s?
3 A. Not for the time frame in which I looked at
4 this material. I made the assumption that the third
5 and fourth editions of what seem to be the most popular
6 textbooks were the most used -- one by this Oliver
7 Bird, et al., went into the '70s -- because there were
8 so many editions of it.
9 You'll see it there. It's called -- Well,
10 just called "Health."
11 Q. Do you know whether that textbook was used at
12 any of the schools Leslie attended?
13 A. No. The state issued a list of acceptable or
14 recommended textbooks, and this was definitely one of
15 them.
16 Q. The state did not mandate that any of these
17 particular books be used, isn't that true?
18 A. That's true.
19 Q. And my question is, do you know whether or not
20 any of them were used at any of the schools that Leslie
21 attended?
22 A. No.
23 Q. "Health For All"? Is that the textbook you're
24 talking about?
25 A. I don't think it's "Health For All." Is it

00136

1 Oliver Bird? You can tell by the authors. It's a list
2 of authors. I thought it was just called "Health."
3 Q. I don't see anybody named on that.
4 Do you see any evidence in any of the

5 testimony that you read that Leslie received
6 instruction on smoking health hazards in school?
7 A. I believe it was mentioned in one of the --
8 most likely, her deposition, that she had. It was
9 required or she had attended health classes.
10 Q. And wasn't she asked whether or not there was
11 a portion or a section on tobacco education?
12 A. That I don't recall right now.
13 Q. I see a cover sheet that says "Health Three:
14 Health, Safety, Fitness."
15 A. Uh-huh.
16 Q. Oliver Bird. Is that the text that you're
17 talking about?
18 A. That's the text. This was a teacher's
19 edition, I'm fairly sure. That came out in at least
20 four different editions. They are all in there.
21 Q. And do you know whether or not any of those
22 were used at Leslie's school?
23 A. No.
24 Q. Or whether -- Well, which section of this is
25 the section? All I see is a table of contents.

00137

1 A. You'll see there are specific pages on
2 whatever chapter would have dealt with drugs,
3 narcotics, alcohol and tobacco.
4 Q. Do you know how long, how many weeks the
5 section that dealt with drugs, tobacco, alcohol and
6 narcotics would have been during Leslie's time in
7 school?
8 A. If you look at this particular text carefully,
9 it looked to me perhaps that they might have spent a
10 couple of weeks on it, given the teacher's notes that
11 accompany the text.
12 Q. Assuming that the teacher taught everything
13 that was in the book?
14 A. Exactly.
15 Q. And have you talked to anyone, including the
16 lawyers representing Philip Morris, as to whether they
17 actually went and talked to the teachers at Leslie's
18 school to find out how long tobacco education -- how
19 long a time period during Leslie's school years tobacco
20 education was taught?
21 A. That question was have I asked them?
22 Q. Or have they told you.
23 A. The answer is "No" to both.
24 Q. Would you be interested to know if Philip
25 Morris' attorneys or investigators have gone to

00138

1 Leslie's school and talked to the principal of her
2 school or any of the teachers?
3 MS. MASON: Objection, presumes facts.
4 THE WITNESS: I don't really have an opinion
5 about it.
6 MS. CHABER: Q. Do you think that would be a
7 source of useful information, to know whether or not
8 and to what extent tobacco education occurred in
9 Leslie's school while she was there?
10 A. I think from a legal standpoint; not from
11 necessarily my standpoint.
12 (Discussion off the record.)
13 MS. CHABER: Q. What was the significance to
14 you of there being other companies involved in this
15 case?

16 A. It had no significance for me. It just was a
17 question that occurred to me, that there seemed to be
18 an abundance of companies or more than the normal
19 number of companies.

20 Q. Do you understand that there's allegations
21 that asbestos exposure --

22 A. I understood that, and it seemed to be
23 construction companies, and company after company.

24 Q. And you have no specific opinions that you're
25 prepared to render in this case vis-a-vis asbestos or

00139

1 knowledge about asbestos?

2 A. No.

3 Q. Do you have any specific opinions vis-a-vis
4 common knowledge of hazards of asbestos and smoking in
5 combination?

6 A. No.

7 Q. Do you know or have any information or
8 awareness of any increased health risk with respect to
9 lung cancer to individuals who were exposed both to
10 asbestos and cigarette smoking?

11 A. No.

12 Q. Volume 1, you didn't take notes on?

13 A. No, because I highlighted it.

14 Q. Okay. I was going to feel insulted, because I
15 happen to know Volume 1 is my questioning.

16 A. Okay. All right.

17 Q. And then you started taking notes in Volume 2?

18 A. I started taking notes in Volume 2, given the
19 fact I didn't have a highlighter.

20 Q. And what was your criteria for writing down
21 the information that you put down?

22 A. I read these as a historian, and with my kind
23 of social history hat on, and I'm trying to figure out
24 what -- First, I do look just peripherally at medical
25 history, if it shows up, if anything; and then what I'm

00140

1 really looking for is what she may have read, what she
2 may have perceived about cigarettes, either from what
3 she read or from some of the things she's going to say
4 in answer to your questions, or what her relatives
5 might say about their perception of cigarettes in this
6 time period.

7 So I'm looking for -- at the questions where
8 you would ask her if her father or mother had told her
9 not to smoke, or if she had smoked in front of them
10 openly, or if she -- anything that would indicate to me
11 that she had some awareness that there was a problem
12 with smoking, either because her parents didn't want it
13 done or because she might have had some sense that it
14 was -- she was taking a risk to do it for other
15 reasons.

16 Q. And what was your perception with respect to
17 Leslie as to what she perceived the risks of smoking
18 were in the 1970s?

19 A. I couldn't -- You're asking for my perception
20 of it, of her perception?

21 Q. Yes. What did you conclude was Leslie's
22 perception?

23 A. That it was strikingly absent, that her
24 perception was strikingly absent, and I thought that
25 curious.

00141

1 Q. You saw that Leslie indicated that she thought
2 that cigarette smoking could give you a cough?
3 A. At most, yes.
4 Q. Was there any significance to her being a
5 truck driver in any of your opinions here?
6 A. Not from my opinions in the case. I just
7 privately found it interesting that she would have
8 trained to be a truck driver.
9 Q. And why would you find that interesting?
10 A. It's still a relatively unusual occupation for
11 a woman. Usually shows some gumption or independence
12 that is just interesting to me.
13 Q. I see you underlined that she had seen
14 "testimony before Congress"?
15 A. Yeah, uh-huh.
16 Q. Why did you underline that?
17 A. You saw I've got a question mark after it,
18 because I was assuming -- I'm not sure you specifically
19 asked about the 1994 testimony, but I'm assuming that's
20 what she saw.
21 Q. And that's what the question mark is?
22 A. Yes.
23 Q. And you've underlined "addictive"?
24 A. Yeah.
25 Q. Why?

00142

1 A. Because of her use of the term repeatedly.
2 The first time, I underlined it, and then you'll see I
3 write it a couple of times.
4 Q. And what is significant to you about the use
5 of the term?
6 A. Because up until 1994, it wasn't the most
7 common way to refer to a smoking habit.
8 Q. But she wasn't being asked in 1994. You
9 understood that?
10 A. Yes, of course.
11 Q. In hindsight, when people are being asked to
12 evaluate behavior, they may use current terminology?
13 A. Uh-huh.
14 Q. And you'd agree back in at least as of 1994
15 the tobacco companies were denying that cigarette
16 smoking was an addiction?
17 A. Did you ask if I agree with that?
18 Q. That they were doing that, yes.
19 A. No, no, in the very general sense that you
20 represented it.
21 Q. You don't agree that in 1994 the tobacco
22 companies were denying that cigarette smoking was an
23 addiction?
24 A. And using that terminology?
25 Q. And using that terminology.

00143

1 A. I guess the answer to that -- I mean, this is
2 getting me into some speculation.
3 There's a problem with the term "addiction."
4 I think you're as aware of it as I am, that it wasn't,
5 up to that point, commonly applied to a tobacco habit
6 or a smoking habit. So, conceivably, then, you would
7 have company officials saying that it wasn't addictive
8 in the scientific or previously scientific definition
9 of what an addiction was.
10 That's all -- That's why I'm a little --
11 Q. You mean they were splitting hairs in front of

12 the U.S. public in terms of whether or not cigarette
13 smoking was addictive?
14 MS. MASON: Objection, argumentative.
15 THE WITNESS: Yeah, I think it is
16 argumentative, because both sides are splitting hairs.
17 MS. CHABER: Q. And you believe that that was
18 a valid and legitimate thing for the tobacco executives
19 to say, that cigarette smoking was not addictive, in
20 1994?
21 A. In 1994, I think in terms of the use of that
22 term, yes, it was valid for them to say what they said.
23 Q. Did you think it was valid in 1994 for a
24 cigarette company to claim that it had not been proven
25 that cigarette smoking caused lung cancer?

00144

1 A. Again, it's hard to answer, because are you
2 talking about at any time period, or just in that 1994
3 testimony?
4 Q. 1994. Not even in that 1994 testimony. In
5 1994, would it have been valid for a cigarette company
6 to claim that it had not been proven that cigarette
7 smoking caused lung cancer?
8 MS. MASON: You're asking for a personal
9 opinion?
10 THE WITNESS: Or is she asking for a
11 scientific opinion?
12 MS. CHABER: Q. No. I'm asking you, in terms
13 of viewing information out there that can come into the
14 common knowledge of people, whether or not that could
15 be viewed as a valid statement, that it had not been
16 proven that cigarette smoking caused lung cancer?
17 A. Well, the operative word there is "proven,"
18 and if you're looking for a clinical test that proved
19 that as of '94 or as of right now, the answer is there
20 is no clinical test that proves it.
21 Q. That's not what I'm asking.
22 A. I don't know what you mean by the word
23 "proven."
24 Q. Would it be reasonable, Doctor -- For an
25 individual who was watching the congressional hearings,

00145

1 reading things, hearing things said by tobacco company
2 officials, would it be reasonable for that individual
3 to conclude that it had not been proven that cigarette
4 smoking caused lung cancer?
5 MS. MASON: Objection, calls for speculation
6 beyond her area of expertise, improper subject area for
7 her expert testimony.
8 THE WITNESS: I can't answer it.
9 MS. CHABER: Q. You do not have opinions as
10 to what the ordinary -- what is reasonable for the
11 ordinary person to believe?
12 A. I have -- Well --
13 MS. MASON: Objection, misstates testimony.
14 THE WITNESS: According, again, to this lowest
15 common denominator of common knowledge or information
16 that individuals -- the average individual, average
17 reasonable individual, would have had, is that the
18 reasonable individual would have known there was a risk
19 in smoking, and that the major risk for most people
20 would have been associated with the term "lung cancer."
21 A reasonable person in 1994 would have, I
22 think, that kind of gut level reaction to the question

23 of the hazards or risks of smoking.
24 MS. CHABER: Q. How vigorous?
25 A. It's up to the individual.
00146
1 Q. What would the reasonable common denominator
2 have been? What would the reasonable person have
3 believed was the risk vis-a-vis lung cancer of
4 cigarette smoke?
5 MS. MASON: You're asking her to quantify it?
6 I'll object as vague.
7 THE WITNESS: I think it is too vague.
8 MS. CHABER: Q. The extent, the risk.
9 A. I think --
10 MS. MASON: I think it's still vague.
11 MS. CHABER: I don't think it is.
12 THE WITNESS: By 1994, again, the reasonable
13 person would have known it was a serious risk, I think.
14 MS. CHABER: Q. What does that mean, "serious
15 risk"?
16 A. Because the evidence, both the scientific
17 evidence and the popular sayings of the dangers of
18 smoking through the media since 1950, had accumulated,
19 and there is a kind of collective memory that goes
20 along with common knowledge, and so probably the
21 average reasonable person in 1994 would have had a
22 greater sense of the risk, because of the intervening
23 media attention and studies, than the average
24 reasonable person in 1954.
25 Q. Would the average reasonable tobacco company
00147
1 executive have knowledge and awareness of the extent of
2 the risk to people from cigarette smoking vis-a-vis
3 lung cancer?
4 MS. MASON: I object as speculation.
5 THE WITNESS: I mean, I can't comment on the
6 personnel in the tobacco companies.
7 MS. CHABER: Q. Well, you can comment,
8 though, about the truck driver on the street, correct?
9 A. Well, because the truck driver on the street
10 is more directly under the influence of what is the
11 common parlance or common information about any
12 product.
13 Q. Than a cigarette company executive who has at
14 their resources scientists, doctors, and so forth?
15 A. And all of that information is not part of the
16 common knowledge information.
17 Q. Are you suggesting that individuals, through
18 whatever common knowledge sources, have more
19 information than tobacco company executives?
20 A. Not at all.
21 Q. Would you agree that the tobacco company
22 executives have, at a minimum, the level that the
23 ordinary person on the street has? I mean, you
24 wouldn't put them in some other class in terms of
25 common knowledge?
00148
1 A. No. As I said earlier, we all start out with
2 the kind of same basic common knowledge, and that
3 expands or contracts depending on where we end up later
4 in life, personally and socioeconomically.
5 Q. And do you know what level of education --
6 whether the level of education has an effect on
7 people's awareness of health risks?

8 A. It should have. But you see very educated
9 people taking abnormal risks all the time, not simply
10 with respect to cigarettes, but with all other kinds of
11 risk-taking activity.

12 Q. Do you know specifically with respect to
13 cigarette smoking whether perception of risk changes
14 based on educational status?

15 A. No, because educated and uneducated people in
16 this and other societies take risks knowing they are
17 risks. Even though the common knowledge is telling
18 them not to, they sometimes don't act on the basis of
19 it.

20 Q. Taking risks and knowing extent of risks, you
21 would agree, are different?

22 A. Semantically, yes.

23 Q. You don't think they are different in terms of
24 real life?

25 A. Well, those, again, are hard terms to deal
00149

1 with, "taking" them and "knowing" them. Obviously,
2 usually, when you take the risk, you know the risk.

3 Q. If you take a risk, for example, of walking
4 into the street, there's some risk you might get hit by
5 a car, correct?

6 A. Right or -- Yeah, there are a lot of --

7 Q. Do you know to what extent people understand
8 the difference between there being some risk from an
9 activity like walking into the street and knowing that
10 one out of every three people who walk into the street
11 get hit by a car?

12 A. No. You'd have to know the individual to know
13 how that particular individual was processing that
14 information, assuming the individual had both types of
15 information.

16 Q. Wouldn't you also need to know what that
17 meant, knowing that there was a risk, vis-a-vis extent?

18 A. I guess so. I don't see the distinction.

19 Q. Let me give you an example. Do you know about
20 data, for example, looking at people who viewing risk
21 of lung cancer from asbestos?

22 A. What's the question again?

23 Q. Are you aware of data looking at people's
24 awareness of risk of lung cancer from substances like
25 asbestos?

00150

1 A. Am I aware of data?

2 Q. Yes.

3 A. That people could get lung cancer?

4 Q. No. Are you aware of data that looks at what
5 people's awareness of risks or perceived risks are from
6 substances such as asbestos?

7 A. No. Am I personally aware? No.

8 Q. Have you looked at any data that deals with
9 people's perceived risks of potential causes of lung
10 cancer other than smoking?

11 A. Very generally, but not for any of the work
12 I've done here for this case or other cases.

13 Q. Do you know what the perceived risk data is
14 with respect to, for example, asbestos, and what the
15 common knowledge of the risk of asbestos vis-a-vis lung
16 cancer is?

17 A. No.

18 Q. Do you know how the perception of risk of a

19 substance like asbestos vis-a-vis lung cancer, do you
20 know how that compares to the actual risk?
21 A. Do I personally?
22 Q. Yes.
23 A. No.
24 Q. Are you aware of information looking at
25 people's perceived risk of cigarette smoking vis-a-vis
00151

1 lung cancer compared with the actual risk?
2 MS. MASON: I'm going to object on foundation.
3 THE WITNESS: Did it start do I know of
4 studies or know of data?
5 MS. CHABER: Q. Right.
6 A. No.
7 Q. That's not something you have looked at?
8 A. That's correct.
9 Q. You would agree that people's perceptions can
10 either overstate a risk or understate a risk vis-a-vis
11 actuality?
12 A. Yes.
13 Q. And then you went on to Leonard Whiteley's?
14 A. Yes, because I read then the rest of that
15 deposition, yeah, and then I picked up with his again,
16 because I was -- whatever I was doing, I didn't have a
17 highlighter.
18 Q. And what was the significance of that he can't
19 even spell his mother's name or when his father died or
20 when they moved to Ventura?
21 A. I just was surprised at how little he knew
22 about his own life. I have done a little bit, not with
23 really family histories, but with family situations
24 where you're interviewing people about their families,
25 and this seemed unusual to me.

00152
1 Q. What did you interpret from that?
2 A. I really didn't know what to interpret. I
3 just took it down. Because, again, I think most people
4 you randomly talk to about their family background
5 would know most of that information, and it just seemed
6 unusual to me.
7 Q. Well, did that cause you to conclude that he
8 was lying, stupid or something else?
9 A. I really didn't conclude anything. What I
10 take down or what I highlight -- and this is just
11 something -- if it isn't specifically related to what
12 I'm looking for in terms of the case, I take it down
13 simply as a reminder that this is what he didn't know.
14 It's unusual, I think.
15 Q. On the side, it says "Look up addiction in old
16 notes." What does that mean?
17 A. This is getting back to our discussion or
18 question earlier about the use of the term "addiction."
19 Q. I don't know what that means.
20 A. I found the term -- It appeared to me to be
21 used somewhat excessively in answers in these
22 depositions, and it's not a term that has in the past
23 been commonly applied to cigarettes or the habit of
24 smoking.
25 Q. And so what did you conclude from that?

00153
1 A. I again, as with the other deposition, I
2 really concluded nothing, except I noted the use of
3 this term, and then I reminded myself that I should

4 look up what had been the previous definition of
5 addiction, when it didn't apply to tobacco.
6 Q. And when did it start to apply to tobacco?
7 A. As far as I can tell, in the public's mind,
8 anyway, in 1994.
9 Q. Didn't the Surgeon General come out in 1988,
10 and wasn't that publicized?
11 A. Not as much as the 1994 statement.
12 Q. Wasn't the 1988 statement publicized?
13 A. It was publicized, yes.
14 Q. And wasn't it disputed by the tobacco
15 companies?
16 MS. MASON: Objection, assumes facts,
17 argumentative.
18 THE WITNESS: I really didn't look into it as
19 much as -- I mean, look into the dispute over it.
20 MS. CHABER: Q. Did you look into the tobacco
21 industry coming out with something actually the day
22 before the Surgeon General came out in 1988 with a
23 statement that cigarette smoking was, indeed, an
24 addiction, an addiction that was as bad as addiction to
25 heroin?

00154

1 MS. MASON: Same objections. That question is
2 vague and compound.
3 THE WITNESS: I can't answer it. The day
4 before?
5 MS. CHABER: Q. Yes.
6 A. I don't have any knowledge, either expert or
7 personal.
8 Q. Did you look through some of the magazines,
9 newspapers, articles to see if there was anything
10 included in there with respect to whether the tobacco
11 industry in 1988 made statements with respect to
12 addiction or the Surgeon General's report?
13 A. Yes, I did. I don't recall any statement
14 prior to the Surgeon General's statement, or report, in
15 '88 by the tobacco companies, any statement that
16 preceded it. I -- Obviously, in there you find
17 statements coming after it.
18 Q. And I think you have some notations of "the
19 lawyers" --
20 A. The lawyers disagreeing over whether or not
21 the deponent is being coached.
22 Q. And what was the reason you wrote that down?
23 A. Just to note. It seemed -- Again, given other
24 depositions I read, it was somewhat -- peculiarly
25 acrimonious.

00155

1 Q. For the record, we would note that I was not
2 at that deposition.
3 A. Yes.
4 MS. MASON: Nor was I.
5 THE WITNESS: You're both off the hook.
6 MS. CHABER: Q. And then there's something
7 circled.
8 A. Uh-huh.
9 Q. And I can't read any of that. On the left.
10 A. The answer was from Leonard Whiteley that
11 either he -- I'm not quite sure of the context here --
12 didn't believe it would kill, or the government would
13 have taken it off the market. Referring to cigarettes.
14 And then I have written over to the side that

15 the lawyer for the defendants -- and when you say see
16 the circled me, that's me -- that the government
17 doesn't pull all products off the market that kill.
18 Otherwise, you'd have very few products on the market.
19 But, anyway, I just noted that for myself. I
20 thought that was an interesting statement that he would
21 make.

22 Q. What other products do you know on the market,
23 Dr. Hoff, that kill as many people as cigarettes?

24 MS. MASON: Objection, vague and
25 argumentative. Assumes facts.

00156

1 MS. CHABER: Q. You just said, otherwise, all
2 products would be off the market, and I believe --

3 A. I said a lot of products.

4 Q. Let's put a list of those products that would
5 be pulled off the market because they kill.

6 A. You said "kill as many."

7 Q. I've changed it.

8 A. You've changed it now to just "kill"?

9 Q. Yeah.

10 A. Automobiles come to mind. Guns come to mind.

11 A number of products come to mind that we know can be
12 detrimental to your health if used or misused in some
13 way.

14 Q. Automobiles aren't designed, at least
15 hopefully not designed, for the purpose of killing?

16 A. No, but you still lose about 55,000 people a
17 year.

18 Q. And do you know how many you lose with respect
19 to cigarette smoking?

20 A. I know, that was back to your first question.
21 But we are just talking now about products that can
22 kill in one way or another.

23 Q. Are you aware of it being a perception of at
24 least some people in the population that the government
25 wouldn't allow a product that killed people to remain

00157

1 on the market?

2 I'm not asking if you agree with that. I'm
3 asking if you were aware that there is some portion of
4 the population that believes that government wouldn't
5 allow a product that killed to remain on the market.

6 MS. MASON: I'm going to object on foundation.

7 THE WITNESS: I couldn't answer that as an
8 expert witness.

9 MS. CHABER: Q. You don't know of any
10 studies, data, information as to people's perception of
11 government vis-a-vis consumer products?

12 A. Not that specifically. I'm aware of various
13 perceptions that people have of the government, not of
14 the government in relation to consumer products.

15 (Discussion off the record.)

16 MS. CHABER: Q. Are you aware of a perception
17 in the public of lung cancer being an old persons'
18 disease?

19 MS. MASON: Could I have a foundation
20 objection to all of these "are you aware of" questions?

21 MS. CHABER: Sure.

22 THE WITNESS: Not really, no. Some of this
23 was, I must confess, news to me.

24 MS. CHABER: Q. Did you think that -- Did you
25 have like opinions about the credibility of these

00158

1 people?

2 A. No, I just was trying to put it into context
3 of interviews I've done with living individuals,
4 obviously, and of previous ones I've read, and this
5 just seemed to me a bit odd.

6 Q. How many people have you interviewed with
7 respect to their beliefs about cigarette smoking?

8 A. None.

9 Q. How many have you interviewed with respect to
10 their beliefs about the government and cigarettes?

11 A. None.

12 Q. Besides Ms. Whiteley and Mr. Whiteley's
13 depositions and the brothers and sisters, how many
14 other depositions have you read with respect to the
15 issues of tobacco?

16 A. I've read the ones for the two cases I've been
17 involved in.

18 Q. I don't know how many that would have
19 entailed.

20 A. There are roughly usually maybe four to six,
21 with respect -- maybe as many as eight with each case.

22 Q. And those two cases would be Rogers and then
23 the Wiley case?

24 A. And the Wiley case, yeah.

25 Q. And Rogers was a living individual?

00159

1 A. No, he was dead. But we had the deposition.

2 Q. He had been deposed before he died?

3 A. Obviously.

4 Q. What was his socioeconomic status and
5 educational level? Give me a short little summary.

6 A. He was a lawyer in Indianapolis.

7 Q. And Ms. Wiley was a nurse?

8 A. She was a nurse at the vets' hospital.

9 Q. And had she been deposed prior to her death?

10 A. Yes.

11 Q. And, obviously, Mr. Rogers was
12 college-educated, and law school, as well?

13 A. Yes.

14 Q. Was Ms. Wiley college-educated?

15 A. She was college-educated to the degree she had
16 a nursing degree.

17 Q. How many other truck drivers or individuals --
18 working class individuals' -- depositions have you read
19 with respect to tobacco?

20 A. It's hard to say. I don't know whether any of
21 the relatives of the other individuals might fall into
22 that category.

23 Q. None come to mind, though?

24 A. No, none come to mind.

25 Q. And you've got something circled, some notes

00160

1 over on the left-hand side.

2 A. Yeah, the circle is -- The statement was "You
3 don't hear things when you are addicted," and then I
4 said -- over to the side I've got a note -- that is,
5 note to myself -- and "ask," which means reflect on
6 this for whatever --

7 I mean, I thought it was an interesting
8 answer. I was just wondering what it meant.

9 Q. And have you reflected on it?

10 A. I haven't come to any conclusion about it. I

11 still have it in front of me here.
12 Q. Do you believe that, if someone is addicted to
13 a substance, that they might filter out such messages?
14 A. It's conceivable.
15 Q. What's this "influx of celebrities"?
16 A. "Influence of celebrities."
17 Q. And Leonard's a truck driver, too?
18 A. Yes.
19 Q. And he, in fact, didn't graduate --
20 A. With her.
21 Q. He didn't graduate high school?
22 A. That's right. He was graduated from the class
23 of truck drivers.
24 Q. But high school, he didn't graduate?
25 A. Uh-huh.

00161

1 Q. And again, your notes on the side pointing to
2 safety regulations with respect to truck drivers --
3 A. Yeah, let's see. I've noted that she might
4 have helped him pass the test. She was sharp and
5 intelligent, he said. And since it's documented by the
6 pages, were these government regulations?
7 I think the attorney asked this, "were just
8 nonsense-created jobs," because it had been stated
9 earlier, either in this deposition -- it must have been
10 in this deposition -- that he thought, Leonard Whiteley
11 thought, the warning labels were put on there to give
12 bureaucrats jobs.
13 Q. Did you ever hear people express things about
14 government interfering in business, big business?
15 A. Yes, in that very general sense. I don't
16 think, personally, I've ever heard someone say that
17 government safety regulations were put on or issued to
18 give bureaucrats jobs, when it involves health and
19 hazards. OSHA, maybe. But, no, I think it's still --
20 Q. You never heard any working class people be
21 very skeptical about the government with respect to
22 hazards and risks and warning labels?
23 A. My brother's a mechanic, and he is subjected
24 to a lot of these safety regulations in his work, and
25 as far as his health is concerned, he thinks that it

00162

1 goes far beyond giving government bureaucrats jobs. He
2 think it's protecting him.
3 Q. And is that your answer with respect to the
4 rest of the working class population?
5 A. No, I don't make any generalizations. I'm
6 just saying that viewing safety regulations as simply
7 to give bureaucrats jobs is something that I found
8 interesting to note and I took it down.
9 Q. Are you aware of any beliefs within the
10 working class population that government warnings are
11 government interfering in big business?
12 A. Not really with respect to government safety
13 warnings. I am aware of other antigovernment
14 interference attitudes, not simply among the working
15 class.
16 Q. Do you find that not believable, that
17 Mr. Whiteley, at age 40, didn't know anyone less than
18 60 getting sick from cigarettes?
19 A. Not really. I didn't find it unbelievable.
20 (Discussion off the record.)
21 MS. CHABER: Q. At the bottom of the page

22 that has -- we are still in Leonard's depo, around page
23 144 --

24 A. Okay, I've got it.

25 Q. Okay. It says "Reynolds Tobacco"?

00163

1 A. Okay.

2 Q. "New attorney Escher"?

3 A. Yes, he entered the deposition. I was noting
4 his name and who he was representing.

5 Q. Have you ever met with any attorneys or people
6 involved with Reynolds Tobacco?

7 A. No. Just the Shook, Hardy people. I mean,
8 individuals there.

9 Q. And then we get to your nightmare page, as I
10 would call it.

11 A. Yes. This didn't come immediately after
12 reading this, but after I'd gone over the rest of the
13 depositions. And I was just starting to put down a
14 number of things, not exclusively in connection with
15 the deposition, but to a certain degree relating -- I
16 was trying to organize, although it doesn't appear to
17 be things about the depositions, and then about the
18 time period. And I started to think in terms of
19 decades.

20 And so you see the top there, it says
21 "1950" -- I mean, I have the American Cancer Society
22 report, '57, the first congressional hearing, a few
23 things to remind myself what was happening, but I
24 decided, well, if some of this doesn't -- how am I
25 going to make sense maybe of the later decades, since

00164

1 I've already done the earlier decades?

2 So I started to list things about decades,
3 '50s, '60s, '70s, '80s, '90s. I don't put in anything,
4 but that's what most of that is about, and just to
5 refresh my memory about what was happening in those
6 decades and what was interesting about the time period
7 other than the issue of tobacco.

8 Q. One of the things was in 1964 we were in the
9 middle of the Vietnam war?

10 A. And Kennedy had been assassinated.

11 Q. And as you well know from your time at
12 Berkeley, there was quite a bit of skepticism of the
13 honesty of our government during that time period?

14 A. Very definitely, with respect to foreign
15 policy.

16 Q. And how about --

17 A. That was also a time period in which we were
18 very supportive of government action with respect to
19 civil rights and with respect to reform issues.

20 Q. Maybe on the Berkeley campus, but you wouldn't
21 generalize that to the south, for example?

22 A. Generalize what?

23 Q. That we, whoever that "we" was, were
24 supportive of government actions with respect to civil
25 rights?

00165

1 A. Well, civil rights, pro civil rights groups,
2 were positive toward the government and urging the
3 government to take action on civil rights and on
4 desegregation, and we were very hopeful about Johnson
5 coming in.

6 Q. No, I'm trying to define the "we."

7 A. Okay. The "we."
8 Q. Who is the "we"?
9 A. I would say most people in the civil rights
10 movement at that time. We were divided in our opinion
11 of the government, because we felt that as the war
12 escalated, it was being mishandled and the foreign
13 policy was not being well thought out.
14 On the other hand, we were at the same time
15 trying to see to it that EEOC and other agencies were
16 going to be enforcing affirmative action, and we were
17 concerned about desegregation, I must confess for the
18 south and not for the north. So we were a little
19 schizoid on the question of government.
20 Q. And when you say "we," what percentage of the
21 "we" were supportive of the government vis-a-vis
22 involvement in civil rights?
23 A. I think most active civil rights -- members of
24 active civil rights groups in the north were.
25 Q. Right, and I'm trying to understand, vis-a-vis
00166

1 the general population, how many people are we talking
2 about? Are we talking about the majority of the people
3 of the United States were supportive of the civil
4 rights movement in the 1960s and the government
5 involvement?
6 A. I wouldn't want to bring it down to
7 percentages. You never have a reform movement that's
8 supported largely by the majority of the people, even
9 when you have revolutions, so there's always a
10 smaller-than-majority percentage.
11 Q. So the common belief was not necessarily the
12 government was doing the right thing with respect to
13 its involvement with civil rights?
14 A. I don't know. I haven't looked at any
15 material on that, really.
16 MS. MASON: I just have to tell my secretary
17 something. Let me step out for a minute.
18 (Discussion off the record.)
19 MS. CHABER: Q. Down in the right-hand side,
20 can you read?
21 A. Okay. The very right-hand side.
22 I was starting to think about --
23 Q. Actually, I think your right and my right
24 might be different.
25 A. Okay. I brought with me the deposition I had
00167

1 given in '77, just to see how that had gone.
2 Q. In '77?
3 A. I'm sorry, in '97, and I was just looking back
4 at that, because, obviously, there's always room for
5 improvement, and I was looking at some of the topics
6 that had come up there that I was anticipating might
7 come up in either this deposition or at the trial.
8 And so there were a few things, and you raised
9 one of them already, about my publishing in the field
10 of tobacco. So, you see, I started to refresh my
11 memory on what subjects --
12 Q. I might cross-examine you about?
13 A. I had researched and not published on. So
14 that's what that long little thing over in the corner
15 is.
16 Then I noted that Ohlemeyer had indicated --
17 and in the deposition that we've just gone over -- that

18 the attorneys would occasionally talk about compound
19 questions and usually interject or object. And so I
20 noted that I wasn't very good at not answering compound
21 questions. I would just usually jump in. So that was
22 in the memo to myself.

23 And then a couple other things just along the
24 same line.

25 Q. And let me just jump in for a second. The
00168

1 "listen, slow down," is also part of your instructions?

2 A. That '97 deposition I thought left a bit to be
3 desired.

4 Q. "Don't use 'might' and 'okay,'" those are more
5 instructions from the lawyer?

6 A. Yeah -- No. In this case, I had the
7 deposition with me, and I was looking at it. And I
8 thought, now what was it that Ohlemeyer had
9 interjected, or -- when he stopped and I had gone
10 ahead?

11 And then I started to say, well, it's these
12 compound questions, which I never recognize as
13 compound, and then that I'm talking too fast most of
14 the time. So I'm saying, you know, think about this.

15 Q. But these are things that were as a result of
16 objections made by Mr. Ohlemeyer?

17 A. In the deposition itself, yeah.

18 Q. Yeah. So they were, in essence, information
19 you were reacting to from the lawyer?

20 A. At the time?

21 Q. Yes.

22 A. Yes, exactly.

23 Q. I'm not that clever to make that be something
24 more.

25 A. Okay.

00169

1 Q. Word, "opinion," what does that mean?

2 A. Where is it?

3 Q. Next to "Why I don't publish on tobacco."

4 A. I tend to -- If this constitutes my opinions,
5 I should think sometimes of saying "no" to that,
6 because of the term "opinions," if it doesn't relate to
7 the expert testimony, if I have an opinion about the
8 painting of the Bay Bridge or something. I should be
9 alert to every time an attorney then would ask me about
10 my opinion, if it weren't my expert opinion.

11 Q. And what's this about "consumer expectation"?

12 A. That was a term that came up that I didn't
13 know what it meant, and in this case I put it down as
14 something to ask what it meant, and I did ask.

15 Q. And what were you told?

16 A. I was told that it was a term that was now
17 used in California law.

18 Q. And were you told what it meant?

19 A. That it had to do with um -- I do remember
20 vaguely what it meant. Expectations about the harm
21 that could normally be expected from a product.

22 Isn't that what it's about?

23 Q. I'm just asking you what your understanding
24 is.

25 A. That's my understanding.

00170

1 Q. Or what you were told.

2 And then what does this say, "don't agree"?

3 A. Then it came up -- no -- this was in relation,
4 forget "consumer expectation" -- that if there might be
5 problems with the 1997 deposition, that I should make
6 sure to ask to see the context of the quote that was
7 being given to me about what I had previously said.

8 Q. Did you have an opportunity to review and
9 correct that deposition after it was given?

10 A. You mean originally?

11 Q. Yes.

12 A. Yes, I did.

13 Q. And did you make any changes or corrections?

14 A. I only made spelling-type errors or changes.

15 Q. And that was your testimony that was given at
16 that time?

17 A. Yes. Yeah.

18 Q. "No sound bites"?

19 A. That comes from the fact that -- I don't know
20 what it comes from exactly. I think it comes from
21 teaching, and also I've been doing some television, and
22 I tend to be a bit glib and maybe come up with a phrase
23 that sounds good, but that from a legal point of view
24 might not be the best thing to have said in such a
25 flippant or flamboyant manner.

00171

1 Q. And what kind of television have you been
2 doing?

3 A. I just did C-Span on the Nixon presidential
4 series. And I've done McNeil-Lehrer, but I've been out
5 of favor with them ever since I didn't agree on Kosovo.

6 Q. And "only" something?

7 A. The difference between a deposition and a
8 trial in terms of, say, catchy phrases.

9 Q. And what was the difference?

10 A. Apparently, the difference appears to be that
11 it's, what, not as vulnerable, from a legal point of
12 view, to use them in trial as it is in a deposition.
13 That's what that means. There should be a little
14 "versus" there.

15 Q. Why did you understand that to be the case, or
16 what did you understand to be the case?

17 A. That simply because the defense attorneys
18 would have had occasion to look at the deposition and
19 could zero in on some term or some phrase I might use
20 and then bring it back at me in trial.

21 Q. And if you use it in trial?

22 A. I couldn't tell you. It seems to me that
23 because that's a give and take back and forth, that
24 it's -- that the attorney would not have the time to
25 think about it or to maybe zero in on it as much.

00172

1 Q. And then on the right-hand side down there
2 when it says "Topics"?

3 A. Those are the topics we went over that I was
4 listing. I had to kind of refresh my own memory about
5 the topics I hadn't published on. It says "Topics I
6 have not published on," and then it lists them. And I
7 mentioned some of those earlier to you today.

8 Q. Now, "cognitive dissonance" you have?

9 A. I was trying to think about why the
10 depositions I have read would indicate that those being
11 deposed knew so little about the risks of cigarettes,
12 and this was a trendy term at some point, I think, for
13 explaining the -- why people -- explaining why people

14 take risks when they know they are risks.
15 Q. And what does it mean?
16 A. I haven't a clue. I mean, I don't know this
17 terminology that well, but it seemed that it was a
18 trendy term at one point to be throwing around about
19 how people -- why people took risks, when I think it's
20 just human nature to take risks. It makes it sound,
21 what, more -- I don't know what it makes it sound like.
22 It makes it sound more like an acceptable
23 rationale for why people take risks when I think it's
24 hard to explain why people take risks.
25 Q. Do you consider yourself an expert on the
00173

1 issue of why people take risks?
2 A. No. I just know that we do, as human beings,
3 and it is just interesting to me that we are
4 risk-taking human beings.
5 Q. Then the next pages, these are your notes
6 on --
7 A. These start with the boxed material. What do
8 you have, the Star Free Press?
9 Q. Yes.
10 A. Okay.
11 Q. You have written down on the second page "I'd
12 rather fight than," and -- you actually wrote "I'd
13 rather die than switch," and you wrote "fight" over it?
14 A. In that issue of the paper, and they had, in a
15 number of the issues of the Ventura paper, the Art
16 Hoppe column, and he had a satirical column in which
17 the conclusion was "I'd rather die than switch."
18 And I was thinking to myself, "What was the
19 slogan?" And I said, "I'd rather walk" -- "I'd walk a
20 mile" -- and it's, no, "I'd rather fight than switch."
21 And so I wrote in, after the fact, "fight," to remind
22 myself what the slogan was.
23 Q. You had mentioned this earlier, and I see you
24 have a note on this local couple using this fan to blow
25 smoke?

00174
1 A. Yeah.
2 Q. Do you know what the reaction in the community
3 was to these people?
4 A. I took it down because I thought it might be
5 something that the local community people might need
6 and remember. I mean, you've taught, I've taught, and
7 largely what the students remember are immaterial
8 anecdotes you tell them about famous people or issues,
9 and I thought, you know, if I were reading that, then I
10 might have remembered it now.
11 Q. And if you were reading that then, you might
12 have thought that these were pretty silly and foolish
13 people?
14 A. I could have.
15 Q. I see you have a note "1977" about antismoking
16 groups used the word "addiction"?
17 A. Where is that, on that same page?
18 Q. Yes.
19 A. Okay, yeah, I noted there -- and again,
20 because it was in my mind from the depositions, that
21 during the smokeouts, which got a lot of coverage, too,
22 one of the things I focused on in terms of the other
23 newspapers, that the people promoting those smokeouts
24 used the word "addiction," and it was to remind me that

25 there had been some use of it before 1994. That is, in
00175

1 a very public way.

2 Q. So did that change your astonishment at
3 Mr. and Mrs. Whiteley using that terminology in 1999?

4 MS. MASON: Objection, misstates testimony,
5 argumentative.

6 THE WITNESS: It just reminded me of the
7 problem I was having with the word "addiction." I
8 mean, I didn't know any more how they were using it
9 than I did when I had read the depositions.

10 MS. CHABER: Q. And what is this about "Pat
11 Buchanan"?

12 A. He had a column taking on Joe Califano for the
13 way in which he was promoting antismoking, because he
14 was a three-pack smoker at the time, and he came out
15 very publicly, I can remember this, and made these very
16 self-righteous, ostentatious statements.

17 Q. Pat Buchanan?

18 A. No, Califano. And Buchanan was taking him on
19 for doing that, and, "Look, you've got, whatever,
20 Dr. Whatever from the National Health Institute who has
21 made sensible statements about how to cut back and why
22 you should cut back," but he thought Califano was just
23 taking advantage of the issue to the benefit of the
24 Carter administration. It was a Republican and
25 Democratic thing.

00176

1 Q. Didn't Carter fire Califano?

2 A. I don't think he fired him. I think he did
3 leave.

4 Q. He fired him.

5 By the way, did you watch "The Tobacco Wars"?

6 A. "The Tobacco Wars"?

7 Q. The recent three-part series on the history of
8 tobacco.

9 A. How recently? Obviously, I didn't. How
10 recent was it?

11 Q. It was done by the BBC within the last year.
12 It was done sometime this year by the BBC, and was
13 rebroadcast on U.S. television very recently.

14 A. No, I did not.

15 Q. Have you seen "The Insider" yet?

16 A. I haven't seen it. I've read a lot about it.

17 Q. You have some notation here about what
18 smoking -- I'm on the next page. Ventura Star Free
19 Press?

20 A. They are slightly out of order. I lost a page
21 there. It's where it says --

22 Q. What does it say next to "1976"?

23 A. Does it say "continued" on the top? Yeah.

24 "1976 smoking clinic in Oxnard at St. John's
25 Hospital," because I was noting all of the stories or

00177

1 ads that were being presented in both local newspapers
2 about smoking.

3 Q. Do you know whether or not Leslie Whiteley was
4 able to smoke while she was in the hospital in the
5 1980s?

6 A. No, I don't specifically know.

7 Q. What does the next line say?

8 A. It says it's "December," I don't know why I
9 took the month, "smoking."

10 Q. "Despite warnings"?
11 A. Figures on smoking you raised earlier going up
12 despite warnings.
13 Q. What does it say on the left-hand side?
14 A. That says "Recorded in all local" -- Oh, both
15 local newspapers went out of their way to report all
16 fires started in homes from cigarettes. They just
17 highlighted them.
18 Q. The next page seems to be about the videos.
19 A. Video, yeah, and it just runs down -- I was
20 trying to see what the different topics were.
21 Q. You'd agree that the Easy Rider magazine, I
22 think your words are, was pro-smoking until the 1990s?
23 A. Uh-huh.
24 MS. MASON: I don't think -- Objection.
25 Misstates testimony.

00178

1 MS. CHABER: I'm reading them, Counsel. You
2 might look over her shoulder.
3 MS. MASON: I thought you meant her previous
4 testimony. I didn't realize you were reading from the
5 notes.
6 THE WITNESS: The note also says "totally
7 sexist."
8 MS. CHABER: Q. That part, I thought we noted
9 oftentimes. I know they are going to open the boxes,
10 those guys down the end of the table, as soon as we
11 leave.
12 (Discussion off the record.)
13 MS. CHABER: Q. Now, on the back here, we've
14 got these textbook --
15 A. You've skipped over Mother Earth News?
16 Q. Yes, I skipped over the "state legislation."
17 I couldn't read most of the stuff.
18 A. On the back of the "state legislation"?
19 Q. Yes.
20 A. Got you. Okay.
21 I was noting or reminding myself the very
22 top -- in 1960, over two dozen books were listed by the
23 Department of Education on hygiene, and then I started
24 to look into them.
25 The first one was by W.W. Bower, et al, and

00179

1 then I jumped over to Julius Richmond, et al, "Health
2 and Growth," and then the one that caught my eye, in
3 part because it was so much better than some of the
4 textbooks I'd seen in Indiana and Ohio, was this Oliver
5 Bird one, "Health." And so then I started to note how
6 it laid out the material.
7 Q. We talked about the fact that you didn't know
8 whether that book had actually been used?
9 A. Yes.
10 Q. And then what's this, "Again no textbooks for
11 the 1970s?"
12 A. That's the question I had in the first page,
13 that I transferred to the first page, but I asked
14 myself that here.
15 Q. Did it get answered?
16 A. At the moment, I'm just assuming that at least
17 the Bird textbook went into the '70s, but I don't know.
18 I'd have to find out.
19 Q. And what's below that?
20 A. The Nordhoff High School library had a number

21 of books on tobacco and on smoking, and in that
22 particular box there were Xerox copies of the titles of
23 the books, and in some cases how many times they've
24 been checked out of the library. You know, those
25 little library cards?

00180

1 Q. Yeah. It gave a title. Or did it give the
2 actual information from the book?

3 A. I had the title and sometimes a couple of
4 pages into the book, but not much information on the
5 book. And then the checkout.

6 Q. And did you count in total how many times all
7 of the books added to be checked out to?

8 A. Well, I can note there one of the books
9 called -- I don't know, I can't read my own writing, it
10 might have been "Today and Your Health," was checked
11 out the most in the 1970s, by a man named Harold Piehl,
12 P-i-e-h-l, and I did look at the checkout slips. It
13 was interesting to see.

14 Q. Did you ever see any names that you recognized
15 as being involved in this case?

16 A. I did not.

17 Q. And did you count how many times these health
18 books had been checked out in total?

19 A. Not precisely. I mean, I looked, and you
20 could see at a glance that they were, what, I don't
21 know, checked out maybe -- I'm trying to think -- maybe
22 half a dozen times in any given year.

23 Q. And this one in particular by this same
24 person?

25 A. Yeah, his was the most, and I assumed, even

00181

1 though I looked at the names of the people checking
2 them out, that these would have been used more likely
3 by the teachers themselves.

4 Q. And you don't know whether he's a teacher or
5 not, that name that you noted?

6 A. No, huh-uh.

7 Q. You didn't see any reference anywhere to
8 Leslie or any of her family members reading Reader's
9 Digest?

10 A. No.

11 Q. Or Consumer Reports?

12 A. No.

13 Q. I don't know if I'm either learning your
14 handwriting or it's improving or both.

15 A. It varies, given where I am, especially if I'm
16 on some kind of public transportation.

17 (Pause in proceedings.)

18 MS. CHABER: Q. Did you ask the attorneys for
19 Philip Morris whether or not they confirmed that Senior
20 Scholastic was made available to the students at this
21 school's --

22 A. I did not ask that. It's a good question to
23 ask. I would be awfully surprised if it were available
24 here in California to the schools.

25 Q. Do you know whether it was actually available

00182

1 in any of the schools that Leslie was in?

2 A. No, I don't.

3 Q. "Jerry Seinfeld"? "Steinfeld"?

4 A. Steinfeld. I didn't know who the Surgeon

5 General was who said in 1971 they should be banned in

6 public places, so I looked that up and noted that.
7 Q. "1974, more teenage girls smoking than boys"?
8 A. From the Senior Scholastic, yeah, and you see
9 the percentages up there.
10 Q. And that's the same time period that Leslie's
11 in high school and smoking cigarettes?
12 A. Yes.
13 Q. Smoking Marlboro cigarettes?
14 I didn't hear an answer. It has to be verbal.
15 A. I'm sorry, yes. Sorry.
16 Q. That's okay. And the reasons stated why teens
17 smoke is because "it's cool, it's adult, action"?
18 A. "Part of the costume." This is what I was
19 really quoting from memory earlier. "More mature,
20 gives you power, relaxes you, reduces tension, teachers
21 smoke," and the gross pictures that they were being
22 shown in the hygiene classes didn't -- it wasn't
23 defined, but I assume those pictures were of the lung
24 operations -- mean nothing. As a young person, it
25 says, "I will not get cancer."

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1 Q. Diet and ads?
2 A. I note for myself "diet and ads," advertising.
3 Neither was mentioned.
4 Q. And what does it say below?
5 A. This is what I indicated to you earlier, that
6 the reasons really were so similar to reasons, what,
7 25, 30 years ago, with the exception that we would call
8 this peer pressure, most of this peer pressure today,
9 and they didn't then.
10 Q. What's this 10,000 by 65?
11 A. Oh, they had a little -- after this article,
12 it gave reasons the students had given for smoking.
13 The article went on to say how expensive it was for
14 them to smoke, and that they would spend, comes back to
15 me now, at 50 cents a pack, 182 packs a year by the
16 time they were 65, they would have spent \$10,000. And
17 then, which isn't in my notes but it was in my head,
18 you could buy, for \$10,000, in 1965, a yacht or a
19 Jaguar. I thought that was interesting.
20 Q. But kids don't think that way, do they?
21 A. What?
22 Q. That if they spent that money or didn't spend
23 that money on something like cigarettes, that they
24 would be able to own a yacht or a Jaguar?
25 A. I don't know. I think the yacht and the

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1 Jaguar might have raised -- hit them as interesting
2 even if they didn't want a yacht or a Jaguar. Maybe I
3 wanted a yacht or a Jaguar.
4 MS. CHABER: Maybe we have the answer.
5 I have to end this.
6 We have the issue of those depositions, and so
7 forth. If there are any additional items or any
8 additional questions, I'd be happy to leave the
9 deposition open and get the deposition done by
10 telephone.
11 I ask you make them available, and if we get
12 copies of these boxes made --
13 MS. MASON: You want them all?
14 MS. CHABER: Yes.
15 MS. MASON: The additional materials that were
16 going to be provided to you, if we have a telephone

17 deposition, the deposition will be limited to those
18 materials and questions about those materials that are
19 provided to you.
20 MS. CHABER: Or any further work, if Dr. Hoff
21 does any further work or reviews any further materials.
22 MS. MASON: Okay.
23 MS. CHABER: Thank you.
24 (Exhibit 4 marked.)
25 (Whereupon the deposition was adjourned at 5:12 p.m.)

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1 REPORTER'S CERTIFICATE

2
3 I, Joanne M. Farrell, CSR No. 4838, hereby
4 certify:

5 That the foregoing proceedings were taken
6 before me at the time and place therein set forth, at
7 which time the witness was put under oath by me;

8 That the testimony of the witness and all
9 objections made at the time of the examination were
10 recorded stenographically by me and were thereafter
11 transcribed;

12 That the foregoing is a true and correct
13 transcript of my shorthand notes so taken.

14 I further certify that I am not a relative or
15 employee of any attorney or of any of the parties, nor
16 financially interested in the action.

17 I declare under penalty of perjury under the
18 laws of the State of California that the foregoing is
19 true and correct.

20 Dated this 10th day of December 1999.

21

22 _____
23 Joanne M. Farrell, CSR# 4838
24
25